

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-2090

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH MARCERA, and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs-Appellants

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individually
and in their official capacities as
members of the New York State
Commission of Correction, and
WILLIAM LOMBARD, Individually and in
his official capacity as Sheriff of
Monroe County and on behalf of all
other persons similarly situated,

Defendants-Appellees

B
P/S

JOINT APPENDIX

MONROE COUNTY LEGAL ASSISTANCE CORPORATION
DAVID W. BEIER III, OF COUNSEL
Attorney for Plaintiffs/Appellants
80 West Main Street
Rochester, New York 14614

LOUIS J. LEFKOWITZ, ESQ.
Attorney General State of New York
PAUL O. HARRISON, OF COUNSEL
300 Terminal Building
65 Broad Street
Rochester, New York 14614

JOHN D. DOYLE, ESQ.
307 County Office Building
Rochester, New York 14614



PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs/Appellants

-vs-

STEPHEN CHINLUND, JOSEPH WASSER
and DOROTHY WADSWORTH, Individually
and in their official capacities as
members of the New York State
Commission of Correction, and WILLIAM
LOMBARD, Individually and in his
official capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

Defendants/Appellees

CIV. NO. 76-508

COURT OF APPEALS

DOCKET NO. 77-2090

INDEX TO APPENDIX

<u>DOCUMENT</u>	<u>PAGE NUMBER</u>
Index to Record.....	1-2
Docket Sheet.....	3-4
Notice of Amended Complaint and Amended Complaint.....	5-25
Plaintiff's Notice of Motion, Motion for Preliminary Relief and Class Certification and Affidavits of Daan Braveman, David W. Beier III, and John Dillman.....	26-44
Affidavit of David Van Varick in opposition to plaintiff's motion for preliminary relief and class certification, with exhibits.....	45-48
Affidavit of William M. Lombard, in opposition to plaintiff's motion for preliminary relief and class certification.....	49-73

<u>DOCUMENT</u>	<u>PAGE NUMBER</u>
Answer of Defendant Lombard.....	74-76
Reply affidavit of Daan Braveman, in support of plaintiff's motion for class certification.....	77-80
Answer of defendant's Chinlund, Wasser and Wadsworth, with Exhibits 1-4.....	81-96
Decision and Order.....	97-104
Plaintiff's Notice of Motion, for an Order Pursuant to Federal Rule 59(e) and affidavits of Adam F. McQuillan, with one exhibit, and David W. Beier III.....	105-122
Affidavits of John B. Kinnicutt and John Doyle on behalf of Defendant Lombard.....	123-128
Affidavit in response to plaintiffs Federal Rule 59(e) motion by Paul O. Harrison on behalf of defendants Chinlund, Wasser and Wadsworth.....	129-130
Plaintiffs Notice of Appeal.....	131
Decision and Order denying Plaintiffs Rule 59(e) motion.....	132-133

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs

v.

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTHY WADSWORTH, Individually and
in their official capacities as
members of the New York State
Commission of Correction, and
WILLIAM LOMBARD, Individually and
in his official capacity as Sheriff
of Monroe County and on behalf of
all other persons similarly situated,

Civ-76-508

Defendants

INDEX TO RECORD ON APPEAL

1. Complaint
2. Plaintiffs' notice of motion for preliminary relief and class certification
3. Plaintiffs' affidavit of service of notice of amended complaint, etc.
4. Notice of amended complaint and amended complaint
5. Plaintiffs' motion for appointment of person to serve process
6. Order appointing Jan DeWaal to serve summons and complaint
7. Plaintiffs' affidavit of service of summons and complaint
8. Plaintiffs' affidavit in support of class certification motions
9. Affidavit of Defendant Lombard in support of motion to deny class certification and to deny temporary injunction
10. Affidavit of David Van Varick in support of motion to deny class certification and to deny temporary injunction
11. Answer of Defendant Lombard
12. Summons and Marshal's return of service
13. Plaintiffs' reply affidavit
14. Plaintiffs' affidavit of service of reply memorandum of law
15. Answer of Defendants Chinlund, Wasser and Wadsworth to amended complaint

A I

BEST COPY AVAILABLE

16. Findings of fact and conclusion of law and order
17. Plaintiffs' notice of motion for an order amending order dated June 21, 1977
18. Plaintiffs' affidavit of service of notice of motion and memorandum of law
19. Affidavits on behalf of Defendant Lombard in opposition to plaintiffs' motion to vacate order
20. Affidavit on behalf of Defendants Chinlund, Wasser and Wadsworth
21. Plaintiffs' notice of appeal
22. Decision and order denying Plaintiffs' motion to vacate denial of preliminary relief and class certification

DOCKET NUMBER	FILING DATE DAY MONTH YEAR	J	N/S	O	H	R	21	3	DEMAND OFFICE	JUDGE NUMBER	JURY DEMAND	DOCKET NUMBER
209 1	76 0508 11 15 76	3	440	1						0902		76 0508

PLAINTIFFS

MARCERA, Joseph, Individually and
on behalf of all others similarly
situated
DILLMAN, John

DEFENDANTS

CHINLUND, Stephen
WASSLER, Joseph
WADSWORTH, Dorothy, Individually
& in their official capacities
as members of the New York State
Commission of Correction
LOMBARD, William, Individually &
in his official capacity as
Sheriff of Monroe County and on
behalf of all other persons
similarly situated

CAUSE Fourteenth Amendment & Civil Rights
Act of 1871, 42 U.S.C. §1983-constitutional
right of pretrial detainees at county
jails to receive contact visits from
friends and family members.

pah

ATTORNEYS

Daan Braveman, Esq.
David Beier, Esq. (opposed)
Monroe County Legal Assistance Corp.
80 West Main Street
Rochester, New York 14614

Louis J. Lefkowitz, Esq. *Chinlund*
Attorney General State of N.Y. *Wassler*
Paul O. Harrison, of Counsel *Wadsworth*
300 Terminal Building
65 Broad Street
Rochester, New York 14614

William J. Stevens, Esq., County Atty.
307 County Office Building
Rochester, New York 14614

CHECK REPE CASE WAS FILED IN ORNA SUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DOCKET

A 3 1

DC-111 (Rev. 1/75)

DATE	NR.	PROCEEDINGS
1976		
Nov. 15		Filed complaint.
15		Issued summons and 4 copies.
15		JS 5 made
30		Filed Pltff's. notice of motion for preliminary relief & class certification etc. ret. 12-13-76
30		" Pltff's. affidavit of service.
30		" Amended Complaint and Notice of amended complaint
Dec. 9		" Pltff's. motion for appointment of person to serve process
9		" order appointing Ian DeWaal to serve S&C etc.-Burke, DJ F-183
10		" Pltff's. affidavit of service of S&C & order on Charles Genesee, Asst. Atty. Gen. of N.Y. on 12-8-76
13		" Pltff's. affidavit in support of class certification motions.
13		Motion by pltffs. for class action and preliminary injunction. To be submitted 1-3-77
23		Filed Deft's. Lombard, affidavit in support of motion to deny class certification
1977-23		Attidavit of David M. Varick in support of motion to deny class certification
Jan. 3		Filed summons & Mar. ret. served on William Lombard on 12-10-76 & no service on Stephen Chinlund, Dorothy Wadsworth & Joseph Wasser
5		" Pltffs. Reply Affidavit
7		" Pltffs. Affidavit of service of reply memorandum of law
		Filed Defts., Chinlund, Wasser & Wadsworth, answer to the amended complaint.
June 22		" Findings of Fact & Conclusions of Law denying pltff's. demand for certification as a class action with respect to class F-189 that the deft., sheriff of Monroe Cty. represents. Pltff's. demand for a preliminary injunction is denied-Burke, DJ Notice & copies to Daan Braveman, William Stevens & Louis J. Lefkowitz
July 5		Filed Pltffs. notice of motion for an order amending the Ct's. order of 6-21-77 etc. ret. 7-11-77.
5		" Pltffs. affidavit of service.
11		" Deft., Lombard, affidavit in opposition to motion
11		" Defts., Chinlund, Wasser and Wadsworth, affidavit
11		Motion by Pltffs. to amend order of 6-21-77. Submitted
22		Filed Pltffs'. Notice of Appeal (copy mailed 7/25/77 to Mr. Lefkowitz, Roch., Attn: Mr. Harrison, to Mr. Stevens and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Beier)
Aug. 1		Filed Decision & Order denying pltffs. motion in all respects to vacate the denial of preliminary relief & certification of a defendant class etc-Burke, DJ Notice to Daan Braveman, David Beier & William J. Stevens

A 4

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individ-
ually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

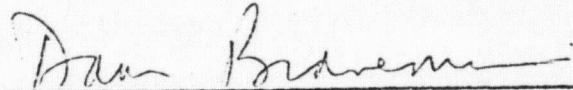
Defendants.

NOTICE OF AMENDED
COMPLAINT

76 Civ. 508

PLEASE TAKE NOTICE that the within is a copy of the Amended
Complaint which plaintiffs are filing in this action as a matter
of course, pursuant to Rule 15(a) of the Federal Rules of Civil
Procedure.

Dated: Rochester, New York
November 23, 1976


DAAN BRAVEMAN, ESQ.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500


DAVID W. BEIER III, ESQ.
Monroe County Legal
Assistance Corporation
30 West Main Street
Rochester, New York 14614
Tel: 716-325-2520

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
individually and on behalf of
all others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individ-
ually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

Defendants.

AMENDED COMPLAINT

CLASS ACTION

Civil No.

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this action for declaratory and injunctive relief pursuant to 42 U.S.C. §1983, seeking to restrain defendants from continuing to deny pretrial detainees the right to receive contact visits while confined in county jails in New York State. As a result of defendants' refusal to ensure a contact visitation program at jails in New York, plaintiffs and other pre-trial detainees are being subjected to the denial of rights secured by the Constitution and laws of the United States.

II. JURISDICTION

2. Jurisdiction is conferred upon this court by virtue of:

a. 28 U.S.C. §1343(3) which provides for original jurisdiction, without regard to the amount in controversy, of any civil action authorized by law "to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, or any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States";

b. 28 U.S.C. §1343(4) which provides for original jurisdiction without regard to the amount in controversy of any civil action authorized by law "to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights. ...";

c. 28 U.S.C. §1331, as the matter in controversy exceeds "\$10,000 and arises under the Constitution and laws of the United States";

III. PARTIES

3. Plaintiff Joseph Marcera is a citizen of the United States and a resident of the State of New York. He is an innocent person who, at the time this action was commenced, was confined as a pretrial detainee in the Monroe County Jail. Plaintiff John Dillman is a citizen of the United States and a resident of the State of New York. He is an innocent persons who is being confined as a pretrial detainee in the Monroe County Jail.

4. Defendant William Lombard is the Sheriff of Monroe County and, as such, is responsible for the care and custody of pretrial detainees at the Monroe County Jail. New York Correction Law §500-c.

5. Defendants Chinlund, Wasser and Wadsworth are members of the New York State Commission of Correction and, as such, share responsibility with the county sheriffs for the care and custody of pretrial detainees confined in county jails. New York Correction Law §§40-48.

IV. CLASS ACTION ALLEGATIONS

6. Plaintiffs bring this action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure on behalf of themselves and all other pretrial detainees confined in any county jail in New York State which does not provide a contact visitation program. The class does not include pretrial detainees confined in any county jail which has been, or is, the focus of another lawsuit requesting contact visits.

7. The class of plaintiffs set forth in paragraph 6 is so numerous that joinder of all members is impracticable. Upon information and belief, there are at least 1500 pretrial detainees confined in county jails which do not provide contact visits and which are not the focus of another lawsuit seeking a contact visitation program. There are questions of law common to the class, namely the constitutionality of defendants' refusal to initiate and ensure the continued operation of a contact visitation program at county jails in New York. The claims of the representative parties are typical of the claims of the class.

Moreover, the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendants. The named plaintiffs will fairly and adequately represent the interests of all class members. Finally, a class action is proper in that defendants have acted, and continue to act, on grounds generally applicable to the entire class.

8. Pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure, defendant William Lombard is sued as a representative of a defendant class which consists of all county sheriffs who are responsible for the care and custody of pretrial detainees confined in jails which do not provide contact visitation programs and which have not been the subject of another lawsuit seeking contact visits.

9. The class of defendants set forth in paragraph 8 is so numerous that joinder of all members is impracticable. Upon information and belief, there are at least 40 county sheriffs who administer county jails which do not provide contact visitation programs and which have not been the subject of another lawsuit seeking such programs. There are questions of law common to the class namely the constitutionality of defendants' refusal to provide contact visitation programs at county jails in New York. The claims and defenses of the representative party are typical of the claims and defenses of the other members of the defendant class.

Prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Moreover, the party opposing the defendant class has acted on grounds generally applicable to the defendant class thereby making appropriate final injunctive and declaratory relief. William Lombard will fairly and adequately represent the interests of all members of the defendant class.

V. FACTUAL ALLEGATIONS

10. Plaintiffs, and other pretrial detainees at the Monroe County Jail are denied the right to receive contact visits from their friends and family members. Rather, plaintiffs and other pretrial detainees are forced to conduct visits through a steel partition which separates the detainee from his visitor and precludes any physical contact whatsoever.

11. While the right of female detainees to receive contact visits at the Monroe County Jail is the subject of another lawsuit, the right of male detainees to receive such visits has not been the subject of any other lawsuit.

12. In New York State there are fifty-seven (57) county jails which house pretrial detainees. A regular contact visitation program is conducted at the following nine (9) jails: Franklin, Broome, Chautauqua, Tioga, Allegany, Schenectady, Nassau, Suffolk and Westchester. Approximately seven (7) other county jails have

been, or presently are, the subject of other lawsuits seeking contact visits.

13. There are approximately forty (40) county jails in which pretrial detainees are denied the right to receive contact visits with family members and friends.

14. Defendant Lombard and other members of the defendant class refuse to provide contact visitation programs for pretrial detainees at their respective county jails.

15. As a general policy convicted prisoners at New York State correctional institutions are allowed contact visits with their family members and friends.

16. Pursuant to legislative mandate, the members of the Commission of Correction promulgated certain minimum standards for the operation and administration of county jails.

17. These standards provide in pertinent part that "[p]hysical contact shall be permitted between a prisoner and his visitors." 9 N.Y.C.R.R. §7008.6.

18. The minimum standards further state that a county jail's "visiting area shall be designed so as to allow physical contact between prisoners and their visitors." 9 N.Y.C.R.R. §7009.2(b).

19. In a letter, dated June 24, 1976, defendants - members of the Commission of Correction explained to the county sheriffs in New York that the minimum standards, including those relating to contact visitation; "reflect constitutional requirements as

well as facility concerns for safety, security and good order."
(A copy of this letter is attached hereto as Exhibit A).

20. The members of the State Commission of Correction stated further in the "Standard Abstracts" which accompanied the regulations and which, upon information and belief, were sent to all county sheriffs in New York:

"The provisions of this Part retain the requirement that prisoners be afforded contact visits (§7008.6). Many courts, including the Second Circuit Court of Appeals, whose jurisdiction includes New York State, have held, after hearing testimony from all concerned (e.g., administrators, corrections experts and prisoners), that contact visitation is a minimal constitutional requirement in local correctional facilities (see Rhem, supra). Contact visitation is now permitted in many jurisdictions including the New York State prison system, the Federal prison system and various local facilities in New York State."

21. Despite full knowledge that contact visitation is a minimal constitutional requirement in county jails, the present members of the Commission of Correction - defendants Chinlund, Wasser and Wadsworth - have failed to enforce the contact visitation regulations. In a letter, dated September 22, 1976, defendants Chinlund, Wasser and Wadsworth stated to administrators of county jails that compliance with the contact visitation standards "will not be required until further study has been undertaken and after the Commission is able to assess with some certainty the possibility of a long-term change in the role and funding sources of local correctional facilities." (A copy of this letter is attached hereto as Exhibit B).

22. Subsequently, in a letter dated November 9, 1976, defendants Chinlund, Wasser and Wadsworth "reaffirmed the requirement that there be compliance with the contact visitation provisions." (A copy of this letter is attached hereto as Exhibit C).

23. Defendants Chinlund, Wasser and Wadsworth have taken no action to ensure the initiation and continued operation of a contact visitation program at the Monroe County Jail and other county jails in New York.

24. The decision by defendants Chinlund, Wasser and Wadsworth to abandon their duty to enforce compliance with the contact visitation regulations results in the daily deprivation of the constitutional rights of plaintiffs and other presumably innocent detainees confined in local jails in New York State.

25. Defendants know, or reasonably should know, that they are depriving plaintiffs and other members of the class of their constitutional right to receive contact visits while confined at county jails in New York State.

VI. FIRST CAUSE OF ACTION

26. Plaintiffs restate, reallege and incorporate each and every allegation contained in paragraphs 1 - 25.

27. The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States prohibits confinement of pretrial detainees under conditions which are more restrictive than those imposed upon convicted prisoners in state correctional facilities.

28. As a result of the refusal by Lombard and the other members of the defendants' class to provide contact visitation programs, plaintiffs and other pretrial detainees are being forced to endure conditions of confinement more restrictive than those imposed on prisoners at state correctional institutions.

29. As a result of the refusal by defendants Chinlund, Wasser and Wadsworth to ensure the initiation and continued operation of contact visitation programs at the Monroe County Jail and other county jails in New York, plaintiffs and other pretrial detainees are being forced to endure conditions of confinement more restrictive than those imposed on prisoners at state correctional institutions.

30. Accordingly, plaintiffs and those persons similarly situated are being subjected to the denial of rights secured by the Equal Protection Clause of the Fourteenth Amendment.

VII. SECOND CAUSE OF ACTION

31. Plaintiffs restate, reallege and incorporate each and every allegation contained in paragraphs 1 - 30.

32. The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States prohibit confinement of pretrial detainees under conditions which are not absolutely necessary to assure the safety of the institution or the detainees' appearance at trial.

33. As a result of the refusal by defendant Lombard and other members of defendants' class to provide contact visitation

programs, plaintiffs and other pretrial detainees are being forced to endure unnecessarily restrictive conditions of confinement.

34. As a result of the refusal by defendants Chinlund, Wasser and Wadsworth to ensure the initiation and continued operation of contact visitation programs at county jails in New York, plaintiffs and other pretrial detainees are being forced to endure unnecessarily restrictive conditions of confinement.

35. Accordingly, plaintiffs and those persons similarly situated are being subjected to the denial of rights secured by the Due Process and Equal Protection Claims of the Fourteenth Amendment.

VIII. THIRD CAUSE OF ACTION

36. Plaintiffs restate, reallege and incorporate each and every allegation contained in paragraphs 1 - 35.

37. The Civil Rights Act of 1871 provides in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. §1983.

38. The actions of defendant Lombard and other members of the defendant class were taken under color of state law and operate to deprive plaintiffs and other pretrial detainees of rights secured by the Constitution of the United States.

39. The actions of defendants Chinlund, Wasser and Wadsworth were taken under color of state law and operate to deprive plaintiffs and other pretrial detainees of rights secured by the Constitution of the United States.

40. Accordingly, plaintiffs and those persons similarly situated are being denied rights secured by the Civil Rights Act of 1871, 42 U.S.C. §1983.

WHEREFORE, plaintiffs respectfully request that the Court

1. Enter a final judgment declaring that the refusal by defendant Lombard and other members of the defendant class to provide contact visitation programs subjects plaintiffs and other pretrial detainees to the deprivation of rights secured by the Civil Rights Act, 42 U.S.C. §1983, and the Fourteenth Amendment to the Constitution of the United States.

2. Enter a final judgment declaring that the refusal by defendants Chinlund, Wasser, and Wadsworth to ensure the initiation and operation of a contact visitation program at the Monroe County Jail and other county jails in New York State subjects plaintiffs and other pretrial detainees to the deprivation of rights secured by the Civil Rights Act, 42 U.S.C. §1983 and the Fourteenth Amendment to the Constitution of the United States.

3. Issue a preliminary and permanent injunction (a) enjoining defendant Lombard and other members of the defendant class from continuing to deny plaintiffs and other pretrial detainees their right to receive contact visits and (b) directing defendant Lombard and other members of defendants class to initiate contact visitation programs at their respective jails.

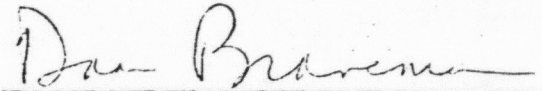
4. Issue a preliminary and permanent injunction (a) enjoining defendants Chinlund, Wasser and Wadsworth from continuing to deny plaintiffs and other pretrial detainees their right to receive contact visits while confined at county jails in New York State; (b) enjoining defendants Chinlund, Wasser and Wadsworth from refusing to ensure the initiation and continued operation of contact visitation programs for plaintiffs and other pretrial detainees at county jails in New York State; and (c) directing defendants Chinlund, Wasser and Wadsworth to develop a plan which will ensure the initiation and continued operation of contact visitation programs for plaintiffs and other pretrial detainees at county jails in New York State.

5. Determine this action to be a proper class action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

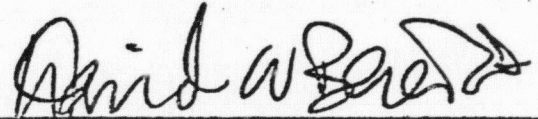
6. Award plaintiffs and those persons similarly situated such other relief as the court may deem just, equitable and proper, including the reasonable attorneys' fees and costs incurred in connection with this action.

Dated: November 23, 1976
Rochester, New York

Respectfully submitted,



DAAN BRAVEMAN, ESQ.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500



DAVID W. BEIER III, ESQ.
Monroe County Legal
Assistance Corporation
80 West Main Street
Rochester, New York 14614
Tel: 716-325-2520

Attorneys for Plaintiff



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, N. Y. 12223

(519) 474-1419/474-1417

CHAIRMAN
~~WILLIAM W. WADSWORTH~~
MEMBERS
~~JOSEPH W. WADSWORTH~~
DOROTHY WADSWORTH
JOSEPH WASSER

June 24, 1976

Dear Sheriff:

As you know, the New York State Commission of Correction, in response to its legislative mandates, is involved in revising minimum standards for the operation and administration of local correctional facilities. To provide you the basis for this responsibility and the nature of the Commission's tasks and goals in general, we have enclosed a copy of Article 3 of the Correction Law. The provisions of this Article delineate the authority of the Commission as well as its obligations to prisoners, facility authorities, and the citizens of New York State.

With regard to minimum standard revision, please find enclosed revised final standards covering the areas of:

1. Correspondence (Part 7004)
2. Visitation (Part 7008)
3. Access to Media (Part 7023)
4. Religion (Part 7024)
5. Packages (Part 7025)
6. Printed Material and Publications (Part 7026)

These standards have been formally approved and adopted by the Commission with an effective date of October 1, 1976. It should be noted that all minimum standards have been transferred from Title 7 of the New York Codes Rules and Regulations (NYCRR) to NYCRR Title 9. This transfer is in accord with Article 3 of the Correction Law and accounts for the number change in the enclosed Parts. Also enclosed are brief supportive and explanatory summaries of the provisions contained in the above listed Parts; more extensive commentaries will be provided prior to the effective date.

The Commission has considered hundreds of suggestions and has made substantial revisions to the original proposals circulated for your comments in January of this year. These revisions were based upon the recommendations of members of the Minimum Standards Advisory Committee individually and at their meeting on February 26, 1976; persons testifying at a public hearing on March 3, 1976; as well as comments received from prisoners, facility administrators and employees, and other members of the criminal justice community. Subsequent to the revisions, the standards were forwarded to members of the Minimum

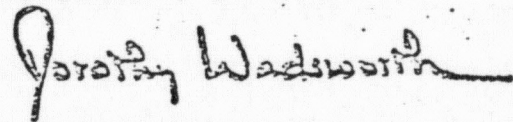
Standards Advisory Committee for their comments. Additionally, the revised standards were distributed to members of the Commission's Sheriffs' Advisory Committee for their information.

It is the Commission's feeling that these final standards reflect constitutional requirements as well as facility concerns for safety, security and good order. In fact, administrators who have already implemented one or all of these standards overwhelmingly agree that they have led to a general reduction in the level of tension and anxiety within those facilities and have contributed to a more constructive and secure atmosphere.

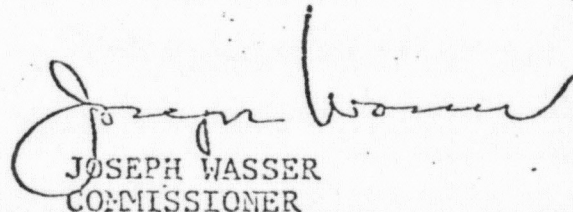
It is hoped that the October 1, 1976 effective date provides sufficient time to enable facility administrators and county legislative bodies to make arrangements for implementation of the standards. It must be emphasized that the Commission is ever mindful of the constraints facility administrators may face in the implementation of standards. As a result, implementation will, in many cases, be an evolutionary process. If a facility administrator feels that he will not be able to fully implement a particular standard by October 1, 1976, the Commission stands ready to entertain requests for additional time based upon good cause. Such requests should contain a detailed explanation of the obstacles faced, the steps anticipated to overcome these obstacles, and a specific timetable for standard implementation. The Commission will of course be available to work with and to provide appropriate assistance to all facilities engaged in the implementation process.

The Commission appreciates your concern, interest and assistance in developing the enclosed standards, and we look forward to your continued cooperation in working with us for the improvement of local correctional facilities in New York State.

Very truly yours,



DOROTHY WADSWORTH
COMMISSIONER



JOSEPH WASSER
COMMISSIONER

DW/JW:mj
Enclosures



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, N. Y. 12223

STEPHEN CHINLUND

CHAIRMAN

MEMBERS

DOROTHY WADSWORTH
JOSEPH WASSER

(518) 474-1418/474-1417

518-474-7827

September 22, 1976

Dear Facility Administrator:

As you know, the six (6) revised minimum standards are scheduled to go into effect on October 1, 1976 and, with the exception of the contact visitation requirement (9NYCRR §§7008.2(b), 7008.6), the Commission expects compliance at that time.

Recent developments call for a different approach to the contact visitation requirement. These developments include the formation of the Governor's Task Force which is looking into the long-range use of local facilities with particular emphasis on the possibility of greater utilization for state inmates. Any move in this direction would require a new formula for any flow of state and federal funds to local facilities.

A second development is the continuing revision of minimum standards by the Commission. While the great majority of these will not entail major structural modification, a few of them will - notably in the area of recreational space both indoor and outdoor. It is expected that any standards with major structural ramifications will be fully studied within the next few months prior to implementation.

The Commission shares with local legislators and officials the desire to undertake comprehensive and long-range correctional planning. As a result, the Commission has determined that compliance with 9NYCRR §§7008.2(b) and 7008.6 will not be required until further study has been undertaken and after the Commission is able to assess with some certainty the possibility of a long-term change in the role and funding sources of local correctional facilities. We have already begun discussion with representatives of the Governor's Task Force, members of the State Legislature and appropriate local officials.

The Commission wishes to reaffirm its commitment to the provision for contact visits for inmates in local correctional facilities. Therefore, facilities which already are in the process of installing contact visits should continue to do so for it will be to their eventual advantage.

EXHIBIT B

A 21

September 22, 1976

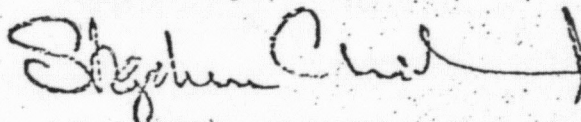
Because many facilities which have been visited by the Commission already have contact visits or are in the process of providing them, each sheriff shall inform us, in writing, of the status of contact visitation in his facility. These status reports should be addressed to:

James McSparron, Counsel
NYS Commission of Correction
Empire State Plaza, Tower Bldg.
Albany, New York 12223

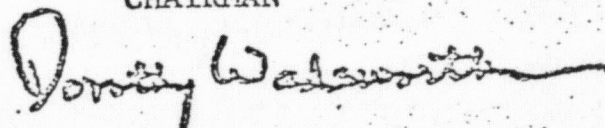
The Commission will continue to work individually with each facility toward making contact visitation possible in the future.

Thank you for your cooperation in this matter.

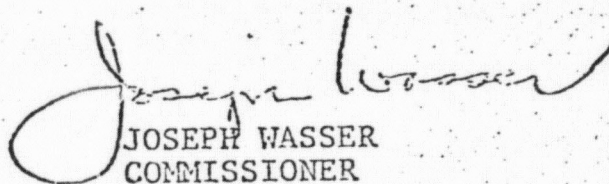
Sincerely,



STEPHEN CHINLUND
CHAIRMAN

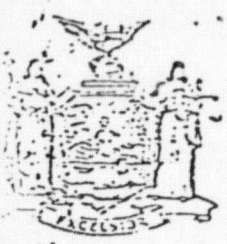


DOROTHY WADSWORTH
COMMISSIONER



JOSEPH WASSER
COMMISSIONER

SC/DW/JW:mj



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223

CHAIRMAN
STEPHEN CHINLUND
COMMISSIONERS
DOROTHY WADSWORTH
JOSEPH WASSER

November 9, 1976

Dear Facility Administrator:

On June 24, 1976, the Commission promulgated six (6) minimum standards concerning Correspondence (Part 7004); Religion (Part 7024); Packages (Part 7025); Printed Material and Publications (Part 7026); Visitation (Part 7008); Access to Media (Part 7023). These standards had been originally approved by the State Commission of Correction for promulgation on January 1, 1976. Because of a variety of events and after various pressures, they were adopted with an effective date of May 1, 1976, later extended to October 1, 1976.

On September 22nd, again for a variety of reasons, the three Commissioners, with advice of Counsel, signed a letter stating that the compliance with the contact visitation section (9NYCRR §§ 7008.2(b) and 7008.6) of the visitation standard would not be required by the Commission until a future undetermined date. This action was taken because of the concern of the Governor's Task Force for the future role of the county jails, because the Commission wished to develop a package of all forthcoming minimum standards which would involve major capital expense to the counties, (this seemed more reasonable for county budget discussions) and because many sheriffs knowing that contact visitation is clearly in their future, were moving on their own toward contact visitation. Several sheriffs already have full programs, and it was felt that the Commission, through our ongoing and growing relationships with each sheriff and each county, would assist all toward this goal.

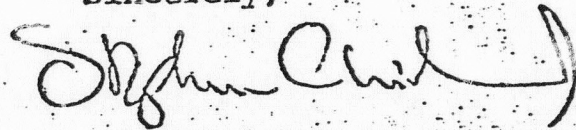
In the last two weeks, the legality and validity of the September 22, 1976 letter has been challenged. The combined facts of the Rhem decision, which have been interpreted as mandating contact visitation throughout all correctional facilities in New York State appears to make, in the legal opinion of some, the September 22, 1976 letter an invitation from the Commission to the sheriffs to "break the law."

Therefore we reaffirm the requirement that there be compliance with the contact visitation provisions of the Visitation minimum standard (9NYCRR Part 7008) effective immediately.

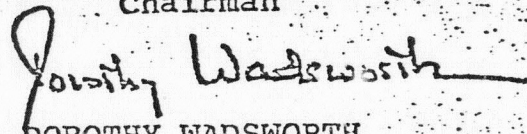
In developing a cautious and evolutionary approach to this seemingly most volatile of issues, the Commission, in good faith, wished to bring, realistically - not in words only -, contact visitation in the county jail facilities. We are committed to the effective implementation of contact visits.

We hope that, despite this determination, we can continue to work with you toward desirable changes.

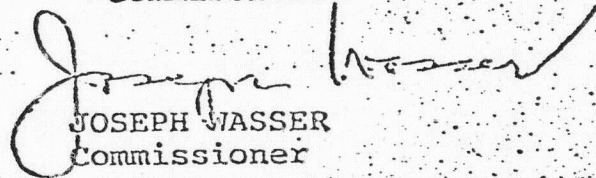
Sincerely,



STEPHEN CHINLUND
Chairman



DOROTHY WADSWORTH
Commissioner



JOSEPH WASSER
Commissioner

SC/DW/JW/mc

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA, et al.,
Plaintiffs,

-vs-

STEPHEN CHINLUND, et al.,
Defendants.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

JOHN DILLMAN, being duly sworn, deposes and says, that deponent is the plaintiff in the within action; that deponent has read the foregoing complaint and, with respect to those matters herein alleged concerning the plaintiff, knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, plaintiff believes them to be true.

John R. Dillman
JOHN DILLMAN

Sworn to before me this

23rd day of November, 1976

David W. Beier, III
DAVID W. BEIER, III

Notary Public in the State of New York
MONROE COUNTY, N. Y.
My Commission Expires March 30, 1978

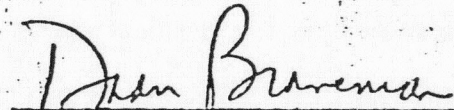
will also move this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction

- (a) enjoining defendant Lombard and members of the defendant class from continuing to deny pretrial detainees their right to contact visits with friends and family members; and
- (b) directing that within 30 days defendant Lombard and each member of the defendant class shall submit to the Court, or person designated by the Court, a plan for the initiation of a contact visitation program at his respective county jail.

PLEASE TAKE FURTHER NOTICE that plaintiff will move for such other relief as the Court deems equitable and proper.

Dated: Rochester, New York
November 23, 1976

Yours, etc.



DAAN BRAVEMAN, ESQ.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500



DAVID W. BEIER III, ESQ.
Monroe County Legal
Assistance Corporation
80 West Main Street
Rochester, New York 14614
Tel: 716-325-2520

Attorneys for Plaintiff

A

27

- 2 -

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individ-
ually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

Defendants.

AFFIDAVIT IN SUPPORT OF
MOTION FOR CLASS
CERTIFICATION

76 Civ. 508

STATE OF NEW YORK) ss:
COUNTY OF MONROE)

DAAN BRAVEMAN, being duly sworn, deposes and says:

1. I am employed as a staff attorney by the Greater
Up-State Law Project of the Monroe County Legal Assistance Cor-
poration. As one of the attorneys representing plaintiffs, I am
familiar with the papers and proceedings in this matter.

2. I am submitting this affidavit in support of
plaintiffs' motion for an order determining that this action may
be maintained as a class action pursuant to Rule 23 of the Federal
Rules of Civil Procedure.

NATURE OF THE CLAIMS

3. Plaintiffs Marcera and Dillman are presumptively innocent persons who are being confined as pretrial detainees in county jails in New York State. At the time this action was commenced plaintiff Marcera was being held in the Monroe County Jail. On November 22, 1976, plaintiff Marcera was released to the custody of the Wayne Sheriff and is being held as a pretrial detainee in the Wayne County Jail. Plaintiff Dillman is being held as a pretrial detainee in the Monroe County Jail.

4. Plaintiffs seek declaratory and injunctive relief restraining defendants from continuing to deny pretrial detainees their constitutional right to receive contact visits from family members and friends while confined in county jails in New York State.

PLAINTIFF CLASS

5. The class which plaintiffs seek to represent consists of all pretrial detainees confined in a county jail in New York which does not provide a contact visitation program and which has not been the subject of another lawsuit seeking such a program.

6. Since pretrial detention is by nature temporary, certification of the plaintiff class is necessary to prevent assertions of mootness. Upon information and belief the majority of pretrial detainees are confined in county jails for fewer than 14 days.

7. Plaintiffs have fully satisfied the prerequisites of Rule 23(a) of the Federal Rules of Civil Procedure which permits

class certification if:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

8. Impracticability of Joinder. The number of pre-trial detainees who are members of the class is so numerous that joinder of all such persons is plainly impracticable. Upon information and belief, there are at least 1500 pretrial detainees confined in county jails in New York which do not permit contact visits with friends and family members and which are not the subject of another lawsuit seeking contact visitation programs.

9. Common issue: A common issue applicable to all members of the plaintiff class described in paragraph five (5) is the constitutionality of defendants' refusal to initiate and ensure the continued operation of contact visitation programs for pre-trial detainees confined in county jails in New York.

10. Typicality. The interests of the named plaintiffs are neither antagonistic to, nor in conflict with, the interests of other members of a class. Indeed, no member of the class could be injured by a determination that defendants must provide contact visitation programs for pretrial detainees confined in county jails.

11. Adequacy of representation. The named plaintiffs would individually benefit from a determination that defendants

must permit contact visits with friends and family members. Accordingly, plaintiffs have a stake in this proceeding which makes their representation adequate. Moreover, plaintiffs are represented by attorneys who have had extensive experience in class action litigation and have served as counsel or co-counsel in the following cases which were certified as class actions: Lucas v. Wasser, 76 Civ. 1057 (S.D.N.Y.); Beckwith v. Taylor, 74 Civ. 5573 (S.D.N.Y.); Braxton v. Poughkeepsie Housing Authority, 73 Civ. 4077 (S.D.N.Y.); Haymes v. Smith, 74 Civ. 221 (W.D.N.Y.); Cooper v. Morin, 50 App. Div. 2d 32 (4th Dept. 1975); Powlowski v. Wullich, 81 Misc. 2d 895 (Sup. Ct. Monroe County, 1975).

12. An action which meets the prerequisites of Rule 23(a) may be maintained as a class action if it also meets the requirements of one or more of the provisions of Rule 23(b). The instant request for certification of a plaintiff class satisfies the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure. The party opposing the plaintiff class consists of public officials who are responsible for the care and custody of innocent persons confined as pretrial detainees in county jails. Insofar as defendants have refused to ensure the initiation and continued operation of contact visitation programs at county jails they have acted, and continue to act, in a manner which is generally applicable to all members of the plaintiff class. In these circumstances, declaratory and injunctive relief is both necessary and appropriate.

DEFENDANT CLASS

13. Rule 23 provides that "[o]ne or more members of a class may sue or be sued as representative parties. ..." (Emphasis added).

14. Plaintiffs are requesting that the Court certify a defendant class which consists of all county sheriffs who are responsible for the care and custody of pretrial detainees confined in county jails which do not provide contact visitation programs and which have not been the subject of another lawsuit seeking contact visits. The prerequisites to the certification of the defendant class are fully satisfied.

15. Impracticability of joinder. The number of persons who are members of the defendant class is so numerous that joinder of all such persons is impracticable. In New York State, there are approximately fifty-seven (57) county sheriffs who are responsible for the care and custody of pretrial detainees. The sheriffs of the following nine (9) county jails provide a regular contact visitation program for pretrial detainees: Franklin, Broome, Chautauqua, Tioga, Allegany, Schenectady, Nassau, Suffolk and Westchester. (See letter, dated October 18, 1976, from Don Selsky, Standard Review and Impact Specialist, State Commission of Correction, attached hereto as Exhibit 1). Additionally, upon information and belief, the following county jails have been, or presently are, the subject of lawsuits seeking contact visits: Chemung, Erie, Genesee, Putnam, Rockland, Sullivan, and the women's section of the Monroe County Jails. Accordingly, there are more than forty (40) county sheriffs who refuse to provide

contact visitation programs for pretrial detainees. Joinder of such sheriffs is impracticable.

16. Common Issue. A common issue applicable to all members of the defendant class described in paragraph fourteen (14) is the constitutionality of defendants' refusal to initiate and ensure the continued operation of contact visitation programs for pretrial detainees confined in county jails in New York State.

17. Typicality. The interests of the representative defendant, William Lombard, are neither antagonistic to nor in conflict with the interests of other members of the defendant class.

18. Adequacy of representation. Defendant Lombard has refused to provide a contact visitation program for plaintiff and other pretrial detainees at the Monroe County Jail. Accordingly, the named defendant has a stake in this proceeding which makes him an adequate representative of the other members of the defendant class.

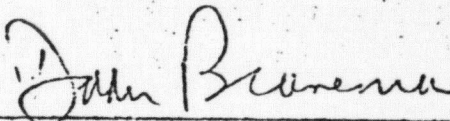
19. Plaintiffs contend that the refusal by defendant Lombard and defendants-members of the State Commission of Correction to ensure the initiation and continued operation of contact visitation programs at county jails violates the Constitution and the Civil Rights Act of 1871, 42 U.S.C. §1983. An adjudication of these claims, as a practical matter, will be dispositive of the right of other sheriffs to deny contact visits and may substantially impede their ability to protect their interest. Indeed, a permanent injunction directing the members of the Commission of Correction

tion to ensure that contact visitation programs are provided at county jails will, as a practical matter, directly affect the rights of the sheriffs who comprise the defendant class. In these circumstances, certification of a defendant class is proper pursuant to Rule 23(b)(1)(B).

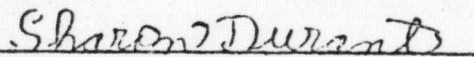
20. Certification of defendant class is also authorized by Rule 23(b)(2) since the plaintiff class, by requesting declaratory and injunctive relief of pretrial detainees at county jails, is acting on grounds generally applicable to the forty (40) sheriffs who comprise the defendant class.

21. Certification of both a plaintiff and defendant class is necessary to avoid a multiplicity of lawsuits and an unnecessary expenditure of judicial resources. Indeed, absent class certification, at least forty independent lawsuits would have to be instituted in order to prevent further deprivation of pre-trial detainees' constitutional right to contact visits.

WHEREFORE, your deponent respectfully requests that the Court enter an order permitting this action be maintained as a class action under Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.


DAAN BRAVEMAN

Sworn to before me this
23rd day of November, 1976.



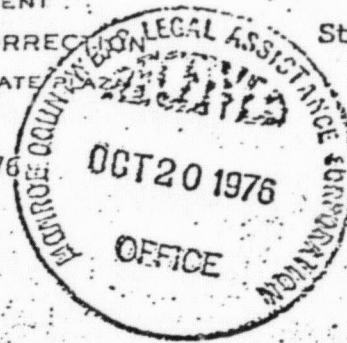
SHARON DURANT
Notary Public, State of N. Y., Monroe County
No. 4517304
Commission Expires March 30, 1978



STATE OF NEW YORK
EXECUTIVE DEPARTMENT

STATE COMMISSION OF CORRECTIONS
TOWER BUILDING, EMPIRE STATE
ALBANY, N.Y. 12223

October 18, 1976



Stephen Chinlund

CHAIRMAN

MEMBERS

DOROTHY WAGSWORTH
Joseph Wasser

Mr. David Baier
Monroe County Legal Assistance Corporation
80 West Main Street
Rochester, New York 14614

Dear Mr. Baier,

I've been requested by Jim McSparron to send you the data I have compiled regarding contact visitation in New York State County Jails. The data consists of a listing of those jails which conduct regular contact visits and their average daily population for 1975. The average daily population for those county jails was totalled and subtracted from the total average daily population for all the county jails to provide a figure reflecting the total number of prisoners who do not receive regular contact visits in New York State County Jails. As you can see, approximately two-thirds of all county jail prisoners do not have regular access to contact visits. However, a number of jails, report having contact visits for special cases or on special occasions.

JAILS REPORTING REGULAR CONTACT VISITS

<u>County</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
Franklin	27	1	28
Broome	65	1	66
Chautauqua	56	1	57
Tioga	10	-	10
Allegany	16	-	16
Schenectady	46	3	49
Nassau	484	28	512
Suffolk	348	10	358
Westchester	222	20	242
Total	1,274	64	1,338

AVERAGE DAILY POPULATION FOR ALL JAILS (1975)

<u>Male</u>	<u>Female</u>	<u>Total</u>
3,776	194	3,970

Total Average Daily Population = 3,970

Total Average Daily Population for jail with contact visits = 1,338

Total Number of prisoners without contact visits = 2,632

I hope this information is helpful to you and if you have any further questions, please contact me at 518-474-1229

Sincerely,

Don Selsky

Don Selsky

Standard Review & Impact Specialist

BEST COPY AVAILABLE

DS/mb

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individ-
ually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

Defendants.

AFFIDAVIT IN SUPPORT OF
PRELIMINARY INJUNCTION

76 Civ. 508

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

DAVID W. BEIER III, being duly sworn, deposes and says:

1. That he is an attorney admitted to practice law in New York State and is currently employed as an attorney for the Monroe County Legal Assistance Corporation. As one of the attorneys representing plaintiffs, he is thoroughly familiar with the papers and proceedings in this case.

2. That he makes this affidavit in support of plaintiffs' motion for a preliminary injunction against defendant Lombard and the class he represents.

3. To pretrial detainees, the opportunity to touch visitors, hold hands, and fondle a child. (i.e. contact visits) is of essential importance.

4. That the inability to have contact visits increases tensions and anxieties within county jails.

5. That inmates at state correctional facilities are convicted felons. Since 1972, such inmates all have the right to contact visitation regardless of the nature of their criminal background and regardless of their prison disciplinary status.

6. That plaintiffs are pre-trial detainees and as such are presumptively innocent of the crimes they have been charged with.

7. That convicted felons, in New York State have better conditions of visitation than plaintiffs.

8. That plaintiffs are incarcerated because of their inability to make bail. Persons charged with committing the same crimes as members of plaintiffs class, who have made bail, are not subjected to such limits on their conditions of humane interaction. There are less restrictive means available which will allow the security of the jails to be preserved and to allow plaintiffs to freely associate, and touch, their visitors. The feasibility of these alternative means can be easily demonstrated by making reference to the New York prisons and those New York county jails which already have contact visits.

9. That defendant Lombard knows, or should have known, that contact visits are constitutionally required. Despite this knowledge defendant Lombard refuses to provide a contact visitation program at the Monroe County Jail.

10. That defendant Lombard has stated publicly and told your deponent that he will not implement contact visiting until ordered to do so by a court.

11. That, upon information and belief, Sheriffs in at least forty (40) other counties, including Wayne County where plaintiff Marcera is detained, have refused to provide contact visits and have acted in such a way as to make contact visitation impossible without a court order. These sheriffs know, or reasonably should know, that contact visits for pretrial detainees are constitutionally required by the Second Circuit.

12. That in light of the foregoing, injunctive relief against all defendants is appropriate and necessary.

13. That the continued denial of contact visitation to members of the plaintiff class constitutes irreparable harm in that they are forced to endure demeaning and dehumanizing visitation procedures which are inconsistent with that status as innocent persons. As a result, plaintiffs and those they represent are subjected to a daily deprivation of their constitutional rights.

14. That the relief sought in this motion, that is, the submission of plans, is not an onerous task, and the balance of equities tips in favor of the plaintiffs.

A

38

- 3 -

BEST COPY AVAILABLE

15. That for the reasons set forth in plaintiffs' brief in support of this motion, plaintiffs have demonstrated a probability of success.

16. Plaintiffs have no adequate remedy at law, and no previous application has been made for this or similar relief.

David W. Beier III

DAVID W. BEIER III

Sworn to before me this
23rd day of November, 1976.

Daniel A. Pozner

DANIEL A. POZNER
Notary Public in the State of New York
Monroe County N. Y. No. 4601754
Commission Expires March 30, 1978

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individually
and in their official capacities as
members of the New York State Com-
mission of Correction, and WILLIAM
LOMBARD, Individually and in his
official capacity as Sheriff of
Monroe County and on behalf of all
other persons similarly situated,

Defendants.

AFFIDAVIT IN SUPPORT OF
PRELIMINARY INJUNCTION

JOHN DILLMAN, being duly sworn, deposes and says:

1. That he is one of the named Plaintiffs in this action.
That he is a pre-trial detainee at the Monroe County Jail (Jail)
and has been incarcerated since September 5, 1976.
2. That he has received visits from his mother, his
father, and his sister.
3. That he finds said visits frustrating, degrading
and humiliating. He has become depressed and despondent about
his inability to physically touch his family member visitors.
4. That he feels like a dead person trapped in a coffin
at the Jail because during visits at the Jail he is unable to
reach out and touch the human beings who are emotionally important

to him. The impersonal atmosphere in the visiting area makes visitation closer to a long distance phone call than a personal encounter.

5. That the steel partition which separates your deponent from his visitors makes it impossible for him to totally communicate, for example, your deponent's mother uses her hands and body to help her talk and your deponent cannot see these gestures at the Jail during visitation.

6. That he received only infrequent visits from his hard of hearing father, George Dillman. These visits were bad experiences. The noise level in the visiting area was so great that meaningful communication was not possible.

7. That the absence of contact visits is a source of great frustration and anxiety within the Jail. This is especially true because other members of the Plaintiff class know that convicted felons in New York get contact visits.

WHEREFORE, your deponent prays that the Court grant the relief requested in the moving papers.

John R Dillman
JOHN DILLMAN

Sworn to before me this

23rd day of November, 1976.

David W. Beier, III

DAVID W. BEIER, III
Notary Public in the State of New York
MONROE COUNTY, N. Y.
My Commission Expires March 30, 1978

personally reviewed
in Ct.
Dec 13, 1976
D.B.R.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA, and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individually
and in their official capacities as
members of the New York State
Commission of Correction, and
WILLIAM LOMBARD, Individually and in
his official capacity as Sheriff of
Monroe County and on behalf of all
other persons similarly situated,

Defendants.

AFFIDAVIT IN SUPPORT OF
CLASS CERTIFICATION
MOTIONS

76 Cl. 508

DAVID W. BEIER III, being duly sworn, deposes and
says:

1. That he is admitted to practice in this Court
and is one of the attorneys for the plaintiff class, and he
makes this affidavit in support of the motion by plaintiffs
for certification of a plaintiff and defendant class.

2. That on the 12th day of November, 1976 your
deponent telephoned the law offices of Peter Kehoe, Esquire of
Troy, New York and informed his office that plaintiff had
filed the instant action. Peter Kehoe is the Executive
Director of the New York State Sheriffs Association. Upon
information and belief, Peter Kehoe represented at the time,
and still represents, all the County Sheriffs in New York State.

3. That on the 15th day of November 1976 your

deponent spoke with Peter Kehoe and again informed him of the filing of this action. Your deponent mailed a copy of the Summons and Complaint to Peter Kehoe on November 15, 1976.

That on the 20th day of November, 1976 your deponent informed Peter Kehoe of plaintiff Marcera's intention to file motions for preliminary relief and class certification of both a plaintiff and defendant class. Your deponent urged Peter Kehoe to appear and participate in this action.

5. That on the 30th day of November, 1976 your deponent mailed Peter Kehoe a copy of the moving papers involved in the instant motion.

6. That your deponent has mailed copies of all pertinent papers herein to all attorneys known to your deponent to be involved in jail conditions litigation in New York State. Specifically, your deponent has sent copies of the aforementioned papers to: Eve Cary of the New York Civil Liberties Union; Joel Berger of the Legal Aid Society of New York City; William Meyers of the Chemung County Legal Aid Society; and Lanny Walter of Prisoners Legal Services. Additionally, your deponent has sent copies of these papers to Jay Crimins, an attorney for the Coalition for Criminal Justice, an unincorporated association consisting of over two hundred civic groups interested in criminal justice reform (especially the improvement of jail conditions).

7. That your deponent submits this affidavit to establish for the Court the level of actual notice given to persons who may be affected by a determination of the instant motions.

David W. Beier III

DAVID W. BEIER III

Sworn to before me this

8th

day of December, 1976.

Lucretia Vickers

Reg. # 9463350

LUCRETIA VICKERS
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Indivi-
dually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all
other persons similarly
situated,

Defendants.

AFFIDAVIT IN SUPPORT
OF MOTION TO DENY
CLASS CERTIFICATION
AND TO DENY TEMPORARY
INJUNCTION

76 Civ. 508

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

WILLIAM M. LOMBARD, being duly sworn, deposes and says:

1. I am the duly elected Sheriff of Monroe County and make this affidavit in support of a motion to deny the certification of either a plaintiff class or a defendant class in the above titled action and also in support of a motion to deny plaintiffs' request for a temporary injunction in that action.

2. As Sheriff of Monroe County and pursuant to Section 500-c of the Correction Law of New York State I am responsible for the care and custody of inmates committed to the Monroe County Jail.

3. As Sheriff of Monroe County and pursuant to the powers of that office as set forth in Article 13 of the Constitution of the State of New York and the provisions of the County Law of the State of New York, I have no authority either to levy a tax or to appropriate any public funds, and therefore the care and custody provided to inmates must be accomplished within the limits of the appropriations made by the Monroe County Legislature, which body, pursuant to the Monroe County Charter, is charged with adopting a budget and levying taxes to finance the operations of the County Government.

4. That based on my understanding of the nature of a contact visiting program we would not be able to operate such a program within the confines of the Monroe County Jail as it is currently constructed and with the current complement of jail security staff.

5. That the implementation of such a contact visiting program would require changes in the physical plan, the hiring of additional personnel to conduct the visiting program and additional personnel to perform the classification function to determine which inmates might be entitled to such contact visits.

6. That a study done during the summer of 1976 by members of the Jail staff resulted in an estimate that to carry out a contact visiting program as outlined in the Revised Minimum Standard on visiting issued by the New York State Commission of Correction would require the expense of approximately \$750,000 to achieve with necessary physical changes and would also require the creation of 30 additional staff positions to operate the visiting facility the required number of hours. A 46

7. That as Sheriff, a constitutional officer without the power or authority to levy taxes or appropriate funds, I cannot cause the necessary alterations, renovations or additions to be made to the Monroe County Jail facility nor can I hire the necessary additional personnel required to implement such a contact visitation program.

8. That, therefore, should a court order me to institute contact visits at the Monroe County Jail I would be unable to comply with that order unless the necessary resources were to be provided by the Monroe County Legislature.

9. That the Monroe County Jail was designed and built as a maximum security institution and visiting is currently conducted through a glass window by means of telephone equipment.

10. That the implementation of a contact visiting program would seriously affect the security of the institution in that it would greatly enhance the ability of inmates to have items of contraband smuggled into the institution.

11. That under the strict security measures currently employed there have been instances when contraband items such as drugs have been smuggled into the institution and the relaxation of those strict security measures which would result from a contact visiting program would only serve to increase this type of problem, create further dangers for the safety and security of both inmates and staff within the Jail facility.

William M. Lombard

WILLIAM M. LOMBARD

Sworn to before me this

27 day of December, 1976.

Sadie J. Conte

SADIE J. CONTE

Notary Public in the State of New York

MONROE COUNTY, N. Y.

Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Indivi-
dually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

Defendants.

AFFIDAVIT IN SUPPORT
OF MOTION TO DENY
CLASS CERTIFICATION
AND TO DENY TEMPORARY
INJUNCTION

76 Civ. 508

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

David Van Varick, being duly sworn, deposes and says:

1. That I am an attorney duly admitted to practice in the State of New York and that I am currently employed as the legal advisor in the Monroe County Sheriff's Office.
2. That as the legal advisor I am familiar with the facts and circumstances concerning the above captioned action with regard to the implementation of a contact visitation program in the Monroe County Jail.
3. That Joseph Marcera, one of the two named plaintiffs in this action is not presently committed to the Monroe County Jail and has not been in the jail since his transfer on November 22, 1976.
4. That John Dillman, the other named plaintiff is presently an inmate of the Monroe County Jail having been

committed to the jail by Judge Donald Mark of the Monroe County Court on September 8, 1976 by virtue of Indictment No. 959 of 1976 charging him with the crimes of Robbery in the First Degree, two counts, and Grand Larceny in the Second Degree, a copy of which indictment is annexed to these papers.

5. That it has not yet been determined whether John Dillman, as a pre-trial detainee charged with a violent type crime is an inmate who subsequent to classification procedures, would be entitled to participate in a contact visitation program if one were available in the facility.

6. That neither plaintiff can, therefore, be viewed as one who is representative of any class within the Monroe County Jail that is entitled to contact visits.

7. That William M. Lombard, as Sheriff of Monroe County, must operate the Monroe County Jail within the appropriations made by the Monroe County Legislature and is, therefore, not representative of all the Sheriffs of New York State, each of whom must operate within his own jurisdiction and who must provide for the care and custody of inmates within the limits of the appropriations of the budgeting body in each respective county.

8. That the New York State Commission of Correction has promulgated a minimum standard which proports to mandate that contact visiting be made available to inmates of local correctional facilities. That standard, which is designated as Part 7008 of Title 9 of the New York Code of Rules and Regulations

was to take effect on October 1, 1976. However, the members of the Commission by letter dated September 22, 1976 directed that the effective date of Sections 7008.2 and 7008.6 of that part would be delayed beyond October 1, 1976.

9. That in a subsequent letter dated November 9, 1976 the members of the Commission indicated that the waiver contained in the September 22, 1976 letter was no longer to be continued and that all of Part 7008 was as of that date in effect.

10. Subsequent to that action by the Commission of Correction the New York State Sheriff's Association on behalf of 43 named Sheriffs moved in New York State Supreme Court in Albany, for a declaratory judgment alleging that the promulgation of Part 7008 was an illegal and improper act on the part of the Commission of Correction, and should, therefore, not be binding on the named county Sheriffs.

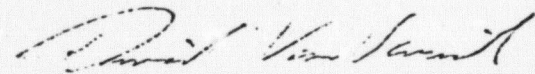
11. That as a part of that action a temporary Restraining Order was requested and granted on November 19, 1976 by the Honorable John H. Penock, a Justice of the New York State Supreme Court sitting in Albany County, which ordered that pending a further hearing on the matter the defendants, the Commissioners of the Commission of Correction, were restrained from enforcing Part 7008 taking any action to compel compliance by the plaintiffs with those minimum standards.

12. That temporary Restraining Order is still in effect and the scheduled hearing has currently been adjourned to December 28, 1976.

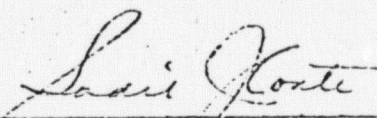
13. That the Sheriff of Monroe County is powerless to institute on his own a contact visiting program, even if so ordered by the Court unless the necessary resources were to be made available by the Monroe County Legislature.

14. That should this Court, therefore, issue such an order to the Sheriff, and since he is powerless to comply even if held in contempt, the only alternative for the Court would be to order the release of all pre-trial detainees committed to the Monroe County Jail.

WHEREFORE, your deponent respectfully requests that the Court deny the motion for certification as a class action and the motion for a temporary injunction.



Sworn to before me this
27th day of December, 1976.


SADIE J. GALT
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1977

STATE OF NEW YORK
COUNTY COURT

COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

-VS-

JOHN R. DILLMAN

FIRST COUNT:

THE GRAND JURY OF THE COUNTY OF MONROE, by this indictment, accuse the defendant, JOHN R. DILLMAN, of the crime of Robbery in the First Degree, in violation of Section 160.15, Subdivision 3, of Penal Law of the State of New York, committed as follows:

The defendant, on or about December 12, 1975, in the County of Monroe, State of New York, forcibly stole property from Claude B. Myott, and when in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime used or threatened the immediate use of a dangerous instrument, to wit, a shotgun.

SECOND COUNT:

AND THE GRAND JURY OF THE COUNTY OF MONROE, by this indictment further accuse the defendant, JOHN R. DILLMAN, of the crime of Robbery in the First Degree, in violation of Section 160.15, Subdivision 4, of the Penal Law of the State of New York, committed as follows:

The defendant, at the same time and place set forth in the first count of this indictment, forcibly stole property from Claudia B. Myott, and when in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime displayed what appeared to be a rifle, shotgun or other firearm.

THIRD COUNT:

AND THE GRAND JURY OF THE COUNTY OF MONROE, by this indictment accuse the defendant, JOHN R. DILLMAN, of the crime of Grand Larceny in the Second Degree, in violation of Section 155.35 of the Penal Law of the State of New York, committed as follows:

The defendant, at the same time and place set forth in the first count of this indictment, stole property, to wit: a sum of United States currency exceeding ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00), the property of Banker's Trust Company of Rochester.

Lawrence T. Kurlander

LAWRENCE T. KURLANDER
DISTRICT ATTORNEY OF MONROE COUNTY

PLEASE TAKE NOTICE that if defendant intends to offer a trial defense that he was not at the scene of the crime charged at the time of the commission thereof, the People demand the serving and filing within eight days from the date hereof, of a "Notice of Alibi" as required by C. P. L. Section 250.20.

TAKE FURTHER NOTICE that the items checked below apply to this case: (See C. P. L. Section 710.30):

☐ The People intend to offer evidence of a statement made by the defendant to a public servant consisting of

.....
.....
.....
.....

☒ The People intend to offer testimony identifying defendant as a person who committed the offense charged, to be given by a witness who previously identified defendant as such.

Yours, etc.

Lawrence T. Kurlander
District Attorney of Monroe County
201 Hall of Justice
Rochester, New York 14614

Service of the within notice is admitted

this day of 19....

.....

At a Special Term of the
Supreme Court of the State of
New York, held in and for the
County of Albany at the Albany
County Courthouse, on the 19th
day of November, 1976.

PRESENT: HON. JOHN H. PENNOCK, Justice

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JOHN J. McNULTY, JR., Sheriff of Albany
County, et al,

Plaintiffs,

-against-

ORDER TO SHOW CAUSE

STEPHEN CHINLUND, Chairman, and DOROTHY
WADSWORTH and JOSEPH WASSER, Commission-
ers, constituting the New York State
Commission of Corrections,

Defendants.

Upon the summons and complaint herein, and the affidavit
of PETER R. KEHOE, sworn to the 18th day of November, 1976, and
sufficient reason appearing therefore, it is hereby

ORDERED that the defendants or their attorneys show cause
before this Court at a Special Term to be held at the Albany County
Courthouse, located at Albany, New York, on the *19th* day of *November*
1976, at *9:30* o'clock in the forenoon of that day, or as soon there-
after as counsel can be heard, why a preliminary injunction should not
issue herein enjoining the defendants, their agents, servants and
employees, pending the determination of this matter, from in any
manner, either directly or indirectly:

(1) enforcing Parts 7004, 7008, 7023, 7024, 7025 and
7026 of Title 2 of the New York Code of Rules and Regulations;

(2) making said Parts of Title 9 of the New York Code of Rules and Regulations obligatory on plaintiffs;

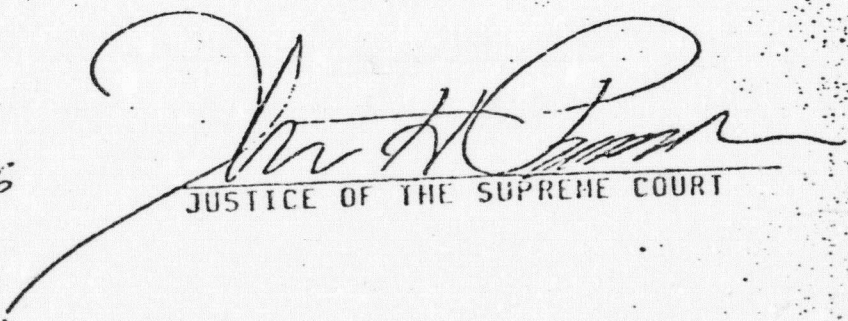
(3) taking any action whatsoever to compel compliance by the plaintiffs herein with the aforesaid Parts of Title 9 of the New York Code of Rules and Regulations; and

(4) why such other and further orders should not be made herein as to the Court may seem just and proper; and it is further

ORDERED that pending the hearing and determination of the within application, the defendants, their agents, servants and employees be restrained and enjoined from enforcing ^{Title 9, NYCRR, ~~Part~~ 7008 of} the aforesaid rules and regulations, from making said parts obligatory on the plaintiffs herein and from taking any action to compel compliance by plaintiffs herein with such rules and regulations; and it is further

ORDERED that service of a copy of this Order to Show Cause and the papers upon which the same has been granted upon the defendants on or before the 20th day of *April*, 1976 shall be deemed good and sufficient service hereof.

DATED: *March 29/76*


JUSTICE OF THE SUPREME COURT

A 579

BEST COPY AVAILABLE

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JOHN J. McNULTY, JR., Sheriff of Albany
County, et al,

Plaintiffs,

--against--

STEPHEN CHINLUND, Chairman, and DOROTHY
WADSWORTH and JOSEPH WASSER, Commissioners,
constituting the New York State Commission
of Corrections,

Defendants.

A F F I D A V I T

PETER R. KEHOE, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs herein and I am fully familiar with all the facts and all the proceedings heretofore had herein.

2. I make this affidavit in support of an application for an Order to Show Cause why a preliminary injunction should not issue enjoining the defendants, Stephen Chunlund, Dorothy Wadsworth and Joseph Wasser, as they constitute the New York State Commission of Corrections, from enforcing Parts 7004, 7008, 7023, 7024, 7025 and 7026 of Title 9 of the New York Code of Rules and Regulations, and from making those rules and regulations obligatory upon the plaintiffs and from taking any action to compel compliance therewith; and for a temporary restraining order to that same effect.

3. That the plaintiffs herein are all duly elected or appointed Sheriffs or Undersheriffs acting in the capacity of Sheriff, of their respective counties and as such have certain duties prescribed by law, including the custody of the county jails and the safekeeping of every

A 58

person committed to custody or imprisonment therein (New York State Constitution, Article 13, Section 13; Correction Law, Section 500-c; County Law, Section 217, Section 650).

4. The defendants, as they constitute the New York State Commission of Corrections, have promulgated, purportedly pursuant to Correction Law Section 45(6), certain rules and regulations which are the subject of this action. Said regulations are set forth in Title 9 of the New York Code of Rules and Regulations, Parts 7004, 7008, 7023, 7024, 7025 and 7026.

5. Upon information and belief, these rules and regulations became effective on October 1, 1976, with the exception of certain regulations relating to contact visitation (9 NYCRR Sections 7008.2(b), 7008.6). Further, with respect to such contact visitation regulations, the Commission of Corrections informed plaintiffs by letter dated September 22, 1976 (a copy of which is attached as Exhibit A and made a part hereof) that compliance was not required at that time. Further, that by letter dated November 9, 1976 (a copy of which is attached as Exhibit B and made a part hereof), said Commission precipitously changed its position and informed plaintiffs that compliance with such visitation regulations was required "immediately".

6. That the plaintiffs have informed your deponent and your deponent verily believes that compliance with the aforesaid rules and regulations will render it impossible for the plaintiffs to comply with their other constitutional and statutory duties with respect to safe-keeping of inmates committed to plaintiffs' custody, and with respect to providing a safe working place for jail personnel, and with respect to securely maintaining custody of inmates both to insure their future appearance in court as required and prevent them from being at liberty

in the community after sentence; that, for instance, the requirement that visitors not be searched in any way other than by electronic means prevents the plaintiffs from detecting plastic or fiberglass weapons, such as knives and guns, before they are put into the hands of prisoners, prevents plaintiffs from detecting explosives before they are put into the hands of prisoners, prevents plaintiffs from detecting drugs before they are passed to and possibly ingested by prisoners, etc.; that, for instance, the Commission's apparent requirement (package list attached hereto as Exhibit C and made a part hereof) that plaintiffs permit prisoners to receive and keep in their cells canned meat, pepper, canned soup, canned soda, table lamps, hot pots, metal mirrors, afro picks, macrame sets, pipe cleaners, etc. assure to each prisoner a ready supply of weapon making and lock fouling materials to the detriment of inmates' safety, to the detriment of jail personnel's safety and to the detriment of community safety; that, for instance, the Commission's apparent requirement that plaintiffs permit inmates to have in their cells bread, cakes, catsup, cereal, cheese, cheese spreads, citrus juices, crackers, dates, donuts, canned fish, canned fruit, health foods, jams, jellies, honey, canned meat, cooked meat, canned milk, pie, potato chips, cooked poultry, instant puddings, sandwich spreads, sardines, soup, spaghetti, spam, sugar, canned vegetables, fresh vegetables, laxatives and vaseline presents unmanageable health hazards for the recipient inmates, the other inmates of the facility and the jail personnel; that, for instance, the Commission's apparent requirement that plaintiffs permit inmates to have in their cells bread, cakes, catsup, cereal, cheese, cheese spreads, citrus juices, crackers, dates, donuts, canned fish, canned fruit, health foods, honey, jam, jellies, canned meat, cooked meat, canned milk, pie, potato chips, cooked poultry, spam, sugar, canned

vegetables, fresh vegetables and laxatives presents unmanageable contraband problems such as are experienced in state prison facilities with specific reference to drugs, alcohol and weaponry, to the detriment of inmates of the facility, other than the recipients, the jail personnel and the public; all of which, it is submitted, places plaintiffs in an irreconcilable dilemma in that if they fulfill their duties to safely keep all their prisoners and maintain a safe working place for their jail personnel and a secure facility vis-a-vis the community, plaintiffs will be in violation of the rules and regulations which are the subject of this action; and if the plaintiffs comply with the aforesaid rules and regulations, they will be in violation of their constitutional and statutory duties to safely keep all their prisoners and maintain a safe working place for the jail personnel and a secure facility vis-a-vis the community; all of which, it is submitted, demonstrates that if the aforesaid rules and regulations are permitted to continue in effect during the pendency of this action irreparable injury would be caused to the plaintiffs and to those to whom they owe a responsibility including inmates, jail personnel and the public.

7. Furthermore, plaintiffs inform your deponent and your deponent verily believes that immediate compliance with the aforesaid rules and regulations, especially with respect to the contact visitation requirement, is impossible, and the defendants herein have acknowledged to your deponent that immediate compliance therewith is impossible, and yet defendants have unreasonably and precipitously placed the plaintiffs herein in jeopardy of being in violation of the law by requiring that something be done immediately when defendants know full-well that it is impossible; and plaintiffs inform your deponent and your deponent verily believes that said impossibility arises from the following facts and

circumstances:

a. Plaintiffs have heretofore constructed or maintained, under the direction and/or approval of the defendants, jail visiting areas in such a manner as to prevent physical contact between prisoner and visitor, and plaintiffs' jails are so constructed;

b. That to comply with contact visiting requirements within existing physical plant would require the plaintiffs to allow prisoners to engage in such visits outside of the secure area of the jail and plaintiffs inform your deponent and your deponent verily believes that to engage in such a practice would violate the Sheriffs' duties to safely keep and detain persons committed to his custody for the benefit of the public, and would subject him to personal liability for escape of prisoners; or, in the alternative, would require the plaintiffs to allow visitors into the secure area of the jail which effectively strips the Sheriff of his statutory duty and discretion to determine those persons who are allowed into the secure area of the jail (Correction Law, Section 500-j) and to engage in such a practice would make it impossible for the Sheriff to comply with his constitutional and statutory duty to safely keep and detain persons committed to his custody for the benefit of the public;

c. That, therefore, safe compliance with such regulations would require substantial construction and/or renovations to facilities operated by the plaintiffs. Naturally, the amount of renovation or construction necessary for such compliance is different for each county jail facility. Without expending hundreds of thousands of dollars to have architectural plans drawn and construction estimates made it is impossible to arrive at an exact cost, but plaintiffs' bona fide estimates based upon initial surveys shows the construction cost for

statewide compliance with contact visiting requirements in county jails to be well in excess of 17 million dollars and possibly as high as 25 million dollars. However, cost consideration aside, immediate compliance is impossible because the Commission's own regulations, (Title 9, NYCRR 7001.1) as well as Correction Law, Section 46(3) require that prior to any physical plant changes, plans and specifications of said changes be prepared and submitted for review by the defendants, and be approved or rejected by them and obviously compliance with said requirement requires the expenditure of time by plaintiffs and defendants and is not something susceptible to being done "immediately". Further, immediate compliance is not possible because of delays which would necessarily occur, subsequent to any such approval of plans and specifications by said defendants, because of the duty of the plaintiffs and their respective county governing bodies to comply with the General Municipal Law with respect to bidding requirements. Further, immediate compliance is not possible at this time due to the delays which would necessarily occur, subsequent to any such approval by said Commission due to natural lag between approval and bidding, and between bidding and actual construction start, and between construction start and completion. Further, that immediate compliance is not possible at this time since the plaintiffs have no authority to tax or appropriate funds for said construction but, rather, are bound by the requirements of orderly budget procedure prescribed by law and must submit budget requests to their respective county governing bodies, together with justification, and then must receive approval and appropriation of funds from said governing body. It is submitted that the defendants herein are fully aware of said inability of the plaintiffs to tax or appropriate funds and of plaintiffs' reliance upon county governing bodies for said

taxation and appropriation. It is further submitted that defendants are fully aware of the county government budgeting cycle and that by virtue of having indicated to the plaintiffs on September 22, 1976 that compliance with the contact visiting standard would not be required until further notice, it is submitted, defendants are estopped from now requiring "immediate" compliance therewith at least until reasonable notice and opportunity for compliance be given, including reasonable opportunity to follow mandated and fiscally sound taxing and budgeting policies of county government.

8. That plaintiffs inform your deponent and your deponent verily believes that immediate compliance with all of the aforesaid rules and regulations is impossible because each requires additional staffing and plaintiffs have no power to tax or appropriate funds and it is submitted, that defendants herein are fully aware of plaintiffs' inability with respect to said taxing or appropriation of funds and are further fully aware that plaintiffs must rely upon county governing bodies to provide allocations for manpower requirements and such allocations must be applied for and justified by plaintiffs, and must be subjected to the normal budget process of county government, and that by virtue of having indicated to the plaintiffs on September 22, 1976 that compliance with the contact visiting standard would not be required until further notice, it is submitted, defendants are estopped from now requiring "immediate" compliance therewith at least until reasonable notice and opportunity for compliance be given, including reasonable opportunity to follow mandated and fiscally sound taxing and budgeting policies of county government.

9. That plaintiffs inform your deponent and your deponent verily believes that compliance with the aforesaid rules and regulations insofar as they require contact visitation is, further, impossible, because the language used is so vague and ambiguous as to prevent plaintiffs from understanding what is required of them in order to effect compliance therewith.

10. That by defendants' own admission (letter of September 22, see Exhibit A) the Governor's Task Force is currently reviewing the function of county jails, which review may well result in different construction requirements which could render worthless and obsolete any construction undertaken now to comply with the rules and regulations which are the subject of this action; and further, by the defendants' own admission in letter of September 22, 1976, the Governor's Task Force may develop alternative sources of financing any future jail construction or renovation which would mean that any construction undertaken now to comply with the rules and regulations which are the subject of this action would be more burdensome on the local taxpayers, than would be the case if said construction was delayed until the Governor's Task Force completed its work with respect to seeking alternative sources of financing.

11. That the New York State Division of Criminal Justice Services is currently seeking federal funds in the amount of 50 million dollars for construction or renovation of county jails, in part to effect compliance with the regulations which are the subject of this action. It is submitted that to require the immediate expenditure by the counties of their own funds in order to comply with these rules and regulations subjects the plaintiffs' and their respective counties to immediate and irreparable injury which could be avoided by merely

delaying implementation of these standards until the prospective federal funds become available.

12. That by defendants' own admission in the letter of September 22, 1976, the defendants are themselves considering other rules and regulations which will require substantial, extensive and expensive construction in most of plaintiffs' facilities, and which may well render worthless and obsolete any construction undertaken now to comply with the rules and regulations which are the subject of this action.

13. That members of the New York State Legislature are currently considering and formulating legislation which could substantially change the physical plant requirements and funding sources for county jails. It is submitted that to require immediate compliance with the rules and regulations which are the subject of this action will require the plaintiffs and their respective counties to construct and/or renovate facilities which may immediately become obsolete and will require plaintiffs' respective counties to expend county funds which would not have to be spent if the legislature were given the opportunity to develop alternative sources of funding.

14. That, it is submitted, the promulgation of the aforesaid rules and regulations by the defendants, in a manner which has made it fiscally and physically unwise or impossible for plaintiffs to comply immediately, has improperly exposed the plaintiffs to the possibility of a multitude of inmate lawsuits seeking compliance with said rules and regulations although said compliance be unwise and/or impossible.

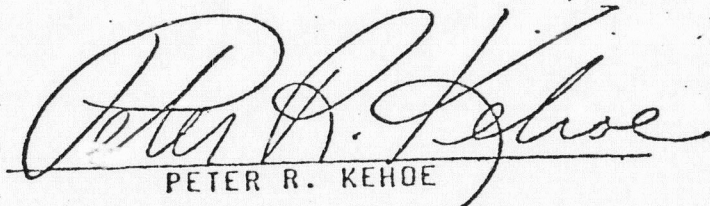
15. That the exposure to irreparable personal injury to plaintiffs thereby created is greater than would be the case with respect to any other public official, such as the New York State

Constitution imposes personal liability upon the Sheriff for his acts whereas the liability of any other county officer would merely be the liability of the county (New York State Constitution, Article 13, Section 13).

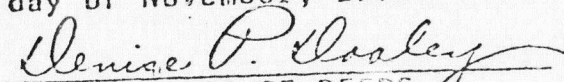
16. That, it is submitted, all of the foregoing demonstrates that to require immediate compliance with the rules and regulations which are the subject of this action violates the plaintiffs' constitutional and statutory authority; requires an unwise, ill-advised and impossible act; and exposes the plaintiffs to immediate and irreparable injury.

17. That, it is submitted, the plaintiffs have no adequate remedy at law.

WHEREFORE, it is respectfully requested that pending the hearing and determination of the motion, this Court grant the injunctive relief indicated in the Order to Show Cause, presented herewith, and that upon the return date thereof the additional injunctive relief described therein be granted.


PETER R. KEHOE

Sworn to before me this 18th
day of November, 1976.


COMMISSIONER OF DEEDS
MY COMMISSION EXPIRES 9/2/78



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, N. Y. 12223

STEPHEN CHINLUN

CHAIRMAN

MEMBERS

DOROTHY WADSWORTH
JOSEPH WASSER

(BIO) 474-1410/474-1417

518-474-7827

September 22, 1976

Dear Facility Administrator:

As you know, the six (6) revised minimum standards are scheduled to go into effect on October 1, 1976 and, with the exception of the contact visitation requirement (9NYCRR §§7008.2(b), 7008.6), the Commission expects compliance at that time.

Recent developments call for a different approach to the contact visitation requirement. These developments include the formation of the Governor's Task Force which is looking into the long-range use of local facilities with particular emphasis on the possibility of greater utilization for state inmates. Any move in this direction would require a new formula for any flow of state and federal funds to local facilities.

A second development is the continuing revision of minimum standards by the Commission. While the great majority of these will not entail major structural modification, a few of them will - notably in the area of recreational space both indoor and outdoor. It is expected that any standards with major structural ramifications will be fully studied within the next few months prior to implementation.

The Commission shares with local legislators and officials the desire to undertake comprehensive and long-range correctional planning. As a result, the Commission has determined that compliance with 9NYCRR §§7008.2(b) and 7008.6 will not be required until further study has been undertaken and after the Commission is able to assess with some certainty the possibility of a long-term change in the role and funding sources of local correctional facilities. We have already begun discussion with representatives of the Governor's Task Force, members of the State Legislature and appropriate local officials.

The Commission wishes to reaffirm its commitment to the provision for contact visits for inmates in local correctional facilities. Therefore, facilities which already are in the process of installing contact visits should continue to do so for it will be to their eventual advantage.

A 68

"EXHIBIT A"

September 22, 1976

Because many facilities which have been visited by the Commission already have contact visits or are in the process of providing them, each sheriff shall inform us, in writing, of the status of contact visitation in his facility. These status reports should be addressed to:

James McSparron, Counsel
NYS Commission of Correction
Empire State Plaza, Tower Bldg.
Albany, New York 12223

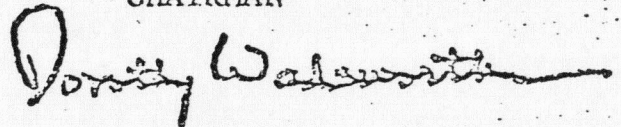
The Commission will continue to work individually with each facility toward making contact visitation possible in the future.

Thank you for your cooperation in this matter.

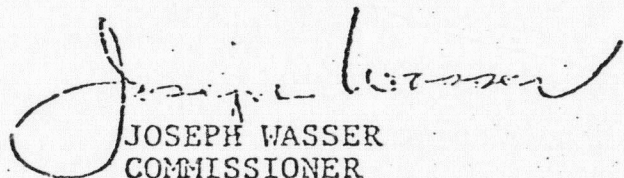
Sincerely,



STEPHEN CHINLUND
CHAIRMAN



DOROTHY WADSWORTH
COMMISSIONER



JOSEPH WASSER
COMMISSIONER

SC/DW/JW:mj

STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223

CHAIRMAN
STEPHEN CHINLUND
COMMISSIONERS
DOROTHY WADSWORTH
JOSEPH WASSER

November 9, 1976

Dear Facility Administrator:

On June 24, 1976, the Commission promulgated six (6) minimum standards concerning Correspondence (Part 7004); Religion (Part 7024); Packages (Part 7025); Printed Material and Publications (Part 7026); Visitation (Part 7008); Access to Media (Part 7023). These standards had been originally approved by the State Commission of Correction for promulgation on January 1, 1976. Because of a variety of events and after various pressures, they were adopted with an effective date of May 1, 1976, later extended to October 1, 1976.

On September 22nd, again for a variety of reasons, the three Commissioners, with advice of Counsel, signed a letter stating that the compliance with the contact visitation section (9NYCRR §§ 7008.2(b) and 7008.6) of the visitation standard would not be required by the Commission until a future undetermined date. This action was taken because of the concern of the Governor's Task Force for the future role of the county jails, because the Commission wished to develop a package of all forthcoming minimum standards which would involve major capital expense to the counties, (this seemed more reasonable for county budget discussions) and because many sheriffs knowing that contact visitation is clearly in their future, were moving on their own toward contact visitation. Several sheriffs already have full programs, and it was felt that the Commission, through our ongoing and growing relationships with each sheriff and each county, would assist all toward this goal.

In the last two weeks, the legality and validity of the September 22, 1976 letter has been challenged. The combined facts of the Rhem decision, which have been interpreted as mandating contact visitation throughout all correctional facilities in New York State appears to make, in the legal opinion of some, the September 22, 1976 letter an invitation from the Commission to the sheriffs to "break the law."

A 70

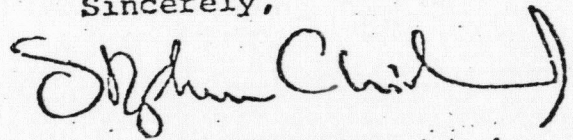
"EXHIBIT B"

Therefore we reaffirm the requirement (at there be compliance with the contact visitation provisions of the Visitation minimum standard (9NYCRR Part 7008) effective immediately.

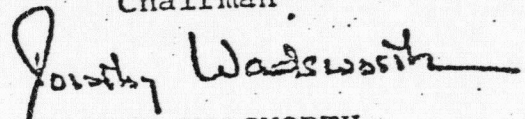
In developing a cautious and evolutionary approach to this seemingly most volatile of issues, the Commission, in good faith, wished to bring, realistically - not in words only -, contact visitation in the county jail facilities. We are committed to the effective implementation of contact visits.

We hope that, despite this determination, we can continue to work with you toward desirable changes.

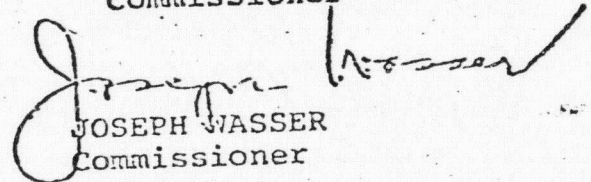
Sincerely,



STEPHEN CHINLUND
Chairman



DOROTHY WADSWORTH
Commissioner



JOSEPH WASSER
Commissioner

SC/DW/JW/mc

PERMISSIBLE PRISONER PACKAGE ARTICLES

Toilet Articles

Afro Pick
Aftershave (Stick Type)
Baby Oil
Combs (Plastic)
Denture Adhesive
Deodorant (Stick Type)
Facial Tissue
Hair Brush
Hair Oil
Mirror (Plastic or Metal)
Polident
Q-Tips

Shampoo
Shaving Brushes
Shaving Cup (Plastic)
Shaving Soap
Soap
Styptic Pencil
Suntan Oil
Tampons or other
Feminine Hygiene Articles
Toothbrush
Toothpaste

Food Items

Whenever possible, all items should be purchased in plastic or metal containers and all food items must arrive at the facility in original commercially-packed containers.

Bread
Cakes
Candy Bars
Candy, Hard
Catsup
Cereal
Cheese
Cheese Spread
Citrus Juices
Cocoa
Coffee
Cookies
Cough Drops
Crackers
Dates
Donuts
Drink Mix
Fish, Canned
Flavored Syrups
Fruit, Canned
Gum
Health Foods
Honey
Jams
Jellies

Juices
Meat, Canned
Meat, Cooked
Milk, Canned
Nuts
Peanut Butter
Pepper
Pickles
Pie
Potato Chips
Poultry, Cooked
Pretzels
Puddings, Instant
Rolls
Salt
Sandwich Spread
Sardines
Soda, Cans
Soup, Canned and Dehydrated
Spaghetti, Canned
Spam
Sugar (cubes)
Tea, Iced and Regular
Vegetables, Canned
Vegetables, Fresh

"EXHIBIT C"

Miscellaneous

Ashtrays
Athletic Supporters
Baseball Caps, Gloves
Bowls, Plastic
Carbon Paper
Checkers
Checker Boards
Chess Sets
Cigarettes
Cigarette Cases
Cigarette Paper
Cigarette Roller
Cigars
Clocks. Small (no alarm)
Cups, Plastic
Cups and Saucers, Plastic
Dictionary (all languages)
Dominoes
Drawing Supplies
Envelopes
Forks, Plastic
Glasses, Drinking (plastic)
Handball Gloves
Hot Pots
Knives, Plastic
Lamps, Desk Type

Loose Leaf Binders
Matches, Book Only
Musical Instruments
Notebooks
Paper
Pens, Pencils
Pipe
Pipe Cleaners
Plates (Plastic)
Playing Cards
Sandals
Shoe Polish
Shoeshine Kits
Showershoes
Sneakers
Snuff
Soap Dish
Softballs
Spoons, Plastic
Sunglasses
Sun Visors
Tape
Tennis Balls
Tobacco
Watches

Hobby Materials

Macrama Sets
Paints and Equipment
Yarn and Equipment
Sewing Sets
Table Games (monopoly, etc.)
Sheet Music

Drug Items

Alka Seltzer (or similar)
Aspirin
Band-aids
Chapstick
Laxatives
Mineral Oil
Noxzema
Saccharin
Vaseline
Vitamins

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

-VS-

STEPHEN CHINLUND, JOSEPH WASSER,
and DOROTHY WADSWORTH, Individ-
ually and in their official
capacities as members of the
New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official
capacity as Sheriff of Monroe
County and on behalf of all other
persons similarly situated,

Defendants

ANSWER

SHERIFF WILLIAM LOMBARD, for his Answer to the amended
complaint herein:

1. Affirms each and every allegation contained in para-
graphs numbered 4, 5, 16, 17, 18 and 37 of the amended complaint
herein.
2. Denies each and every allegation contained in para-
graphs numbered 2, 6, 7, 8, 9, 10, 11, 14, 20, 21, 27, 28, 29,
30, 32, 33, 34, 35, 38, 39 and 40 of the amended complaint herein.
3. Does not have knowledge of facts sufficient to form
a belief as to the truth of paragraphs numbered 1, 12, 13, 15, 19,
22, 23, 24 and 25 of the complaint herein.

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

1. The defendant, William Lombard, moves under Rule 12B 6 to dismiss this action for failure to state a claim for which relief may be granted.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

2. The defendant above moves to dismiss the action in that the plaintiffs do not represent the class as alleged as there is no common question of law or fact with the persons they claim to represent.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

3. This Court does not have jurisdiction in that the same issue of fact and law is being litigated before another Court of coordinate jurisdiction.

WILLIAM J. STEVENS
Attorney for County of Monroe
MICHAEL K. CONSEDINE, of Counsel
307 County Office Building
Rochester, New York 14614
Phone: 428 5280

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA, et al

Plaintiffs,

-vs-

STEPHEN CHINLUND, et al,

Defendants.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF MONROE) SS.

SHERIFF WILLIAM LOMBARD, being duly sworn deposes and says: that deponent is a Defendant in the within action; that deponent has read the foregoing complaint and, with respect to those matters herein alleged concerning the Defendant, knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, Defendant believes them to be true.

Sworn to before me this

William Lombard

WILLIAM LOMBARD, Sheriff

_____ day of December, 1976

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA, et al.,
Plaintiffs,

-vs-

STEPHEN CHINLUND, et al.,
Defendants.

REPLY AFFIDAVIT

Civ. 76-508

STATE OF NEW YORK)
COUNTY OF MONROE) ss:

DAAN BRAVEMAN, being duly sworn, deposes and says:

1. I am employed by the Greater Up-State Law Project of the Monroe County Legal Assistance Corporation. As one of the attorneys representing plaintiffs, I am thoroughly familiar with all the papers and proceedings in this matter.

2. I am submitting this affidavit in support of plaintiffs' motion for class certification which is pending before this Court.

3. Plaintiffs are seeking certification of a plaintiff class consisting of all pretrial detainees confined in those county jails which do not provide contact visitation programs and which have not been the subject of another lawsuit seeking such a program.

4. On January 3, 1977, I received a letter, dated December 30, 1976, from the counsel for the State Commission of Correction. Attached to the letter was a chart which indicated the number of prisoners in custody in each county jail on December 31, 1975.

(A copy of the letter and chart are attached hereto as Exhibit 1).

5. The chart reveals that on December 31, 1975, a total of 2,407 persons were confined in county jails awaiting trial.

6. A total of 812 persons were confined as pretrial detainees in the following county jails which presently provide contact visitation programs: Franklin, Broome, Chautauqua, Tioga, Allegany, Schenectady, Nassau, Suffolk and Westchester.

7. A total of 427 persons were confined as pretrial detainees in the following county jails which have been the subject of lawsuits seeking contact visits: Chemung, Erie, Genesee, Putnam, Rockland, Sullivan and the women's section of the Monroe County Jail.

8. Accordingly, a total of 1,168 persons were confined as pretrial detainees in the county jails which do not provide contact visitation programs and which have not been the subject of another lawsuit seeking such a program. Joinder of these persons in the instant lawsuit is impracticable.

9. This figure represents a daily county which varies from day to day and does not include the many other hundreds of persons who are held as pretrial detainees in these forty jails during the year.

WHEREFORE, your deponent respectfully requests that plaintiffs motion for class certification be granted.

Daan Braveman
DAAN BRAVEMAN

Sworn to before me this

4th day of January, 1977.

Sharon Durant

SHARON DURANT
Notary Public, State of N.Y., Monroe County
No. 4517301
Commission Expires March 30, 1978



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, N. Y. 12223

CHAIRMAN
STEPHEN CHINLUND
MEMBERS
JOSEPH WASSER
DOROTHY WADSWORTH

518-474-6794

December 30, 1976

Mr. Don Braveman
56 Berkely Street
Rochester, New York 14607

Dear Mr. Braveman:

Pursuant to your telephone request, please find enclosed a computation of the number of inmates housed in local correctional facilities in New York State on December 31, 1975.

Very truly yours,

James McSparron
mj

JAMES McSPARRON
COUNSEL

JMcS:mj
Enc.

EXHIBIT 1

A 79

197

2279	128
------	-----

A 80

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

-VS-

STEPHEN CHINLUND, JOSEPH WASSER, and
DOROTHY WADSWORTH, Individually and
in their official capacities as members
of the New York State Commission of
Correction, and WILLIAM LOMBARD,
individually and in his official capacity
as Sheriff of Monroe County and on behalf
of all other persons similarly situated,

Defendants.

ANSWER OF DEFENDANTS
: Chinlund, Wasser and
Wadsworth

: Civil No. 76-508

Defendants Stephen J. Chinlund, Joseph Wasser,
and Dorothy Wadsworth, individually and officially as members of the
New York State Commission of Correction, by their attorney, Louis
J. Lefkowitz, Attorney General of the State of New York, for their
Answer to the Amended Complaint herein allege and show to the Court
upon information and belief as follows:

1. That they deny that they are in any way
violating any rights of the named plaintiffs or of the class they
purport to represent: pre-trial detainees confined in county jails
within the State of New York.

AS AND FOR AN AFFIRMATIVE
DEFENSE:

2. That they have promulgated regulations,
standards, guidelines and instructions addressed to the various

custodial facilities establishing and governing the rights of pre-trial detainees to contact visitation within the standards of the appropriate State regulations; and they annex hereto and incorporate in this Answer the following Exhibits demonstrating their policy and promulgations relative to contact visitation rights of pre-trial detainees in county jails within the State of New York:

EXHIBIT # 1 - Promulgation Statement by State Commission of Correction, dated June 24, 1976.

EXHIBIT # 2 - Letter from State Commission of Correction dated August 18, 1976, and annexed Memorandum re: Revised Minimum Standard for Contact Visitation, 9 NYCRR §7008.6.

EXHIBIT # 3 - Letter from State Commission of Correction dated September 22, 1976.

EXHIBIT # 4 - Letter from State Commission of Correction dated November 9, 1976.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE:

3. That they have been restrained from enforcing their regulations as to contact visitation in an action brought in New York Supreme Court, County of Albany, and that they are engaged in defending against the said action; and that they annex hereto and make a part hereof as Exhibit No. 5 a copy of the current Order of Hon. John J. Pennock, J.S.C., imposing the preliminary injunction against the Commission's enforcement of 9 N.Y.C.R.R. Part 7008 relative to contact visitation.

BEST COPY AVAILABLE

AS AND FOR A CROSS-CLAIM AND
A THIRD AFFIRMATIVE DEFENSE:

4. That the defendant Lombard and all members

New York law, particularly 9 New York Codes, Rules and Regulations Part 7008, Section 7008.6, to allow contact visitation by pre-trial detainees held in custody in their respective county jails.

WHEREFORE, defendants Chinlund, Wasser and Wadsworth ask that the Complaint herein and this action be dismissed as to them in all respects, and that the relief requested as against defendant Lombard and the class to which he belongs be granted.

Dated: January 3, 1977.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
CHINLUND, WASSER, and WADSWORTH

Paul O. Harrison

PAUL O. HARRISON
Assistant Attorney General
of Counsel
300 Terminal Building
65 Broad Street
Rochester, New York 14614
Tele.: (716) 454-4540

P R O M U L G A T I O N S T A T E M E N T

The State Commission of Correction pursuant to Correction Law §45(6) hereby effective October 1, 1976 renumbers sections 5100.1 to 5100.23, 5101.1 to 5101.4, and 5200.1 to 5200.12. inclusive, of Title 7 of the Official Compilation of Codes, Rules and Regulations of the State of New York to be sections 7000.1 to 7022.1 of Parts 7000 to 7022, sections 7100.1 to 7103.1 of Parts 7100 to 7103, and sections 7500.1 to 7511.1 of Parts 7500 to 7511, respectively, of Subtitle AA of Title 9 of said Compilation, and amends Parts 7004 and 7008 of said Title 9, and amends by adding Parts 7023, 7024, 7025 and 7026, to said Title 9, as hereby re-numbered and amended, said Title 9 shall read as follows:

SUBTITLE AA State Commission of Correction

Chapter I Minimum Standards and Regulations for Management of County Jails and Penitentiaries

Subchapter A Minimum Standards and Regulations

Parts

- 7000 Legal Authority
- 7001 Construction and Renovation
- 7002 Admissions - Discharges
- 7003 Security and Supervision
- 7004 Correspondence
- 7005 Prisoner Personal Hygiene
- 7006 Discipline
- 7007 Good Behavior Allowances Against
 Definite Sentences
- 7008 Visitation
- 7009 Food Services
- 7010 Health Services

EXHIBIT NO. 1

A 84

- 7011 Prisoner Employment
- 7012 Work Release
- 7013 Classification of Prisoners
- 7014 Sentence of Intermittent Imprisonment
- 7015 Sanitation
- 7016 Commissary
- 7017 Personnel Standards
- 7018 Records
- 7019 Gifts and Gratuities
- 7020 Conditional Release (Local Parole)
- 7021 Privileged or "Trusty" Prisoners
- 7022 Unusual Incidents
- 7023 Access to Media
- 7024 Religion
- 7025 Packages
- 7026 Printed Material and Publications

Subchapter B Implementation and Operation of Treatment Programs

Parts

- 7100 Background
- 7101 Purpose
- 7102 Preliminary Steps
- 7103 Treatment Areas

Chapter II Minimum Standards and Regulations for Management of City Jails - Town and Village Lockups

Parts

- 7500 Legal Authority
- 7501 Definition
- 7502 Admission Procedures
- 7503 Medical
- 7504 Supervision of Detention Areas
- 7505 Food
- 7506 Sanitation and Maintenance
- 7507 Discipline
- 7508 Unusual Incidents
- 7509 Records
- 7510 Visits
- 7511 Construction and Renovation

C E R T I F I C A T I O N

We, Dorothy Wadsworth and Joseph Wasser, Commissioners of the State Commission of Correction, do hereby certify that the attached is the original of the rules and regulations adopted by said Commission on June 24, 1976 pursuant to Correction Law §45(6).

June 24, 1976

Dorothy Wadsworth

DOROTHY WADSWORTH
COMMISSIONER

June 24, 1976

Joseph Wasser

JOSEPH WASSER
COMMISSIONER



(518) 474-1419/474-1417

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, N. Y. 12223

STEPHEN J. CHINLUND
CHAIRMAN

MEMBERS

DOROTHY WADSWORTH
JOSEPH WASSER

August 18, 1976

Dear Facility Administrator:

The State Commission of Correction, in recognition of its obligation to provide assistance to local correctional facilities both in interpreting and implementing revised minimum standards, offers the enclosed explanatory guidelines to be used in conjunction with 9NYCRR Part 7008. These guidelines are designed primarily as a response to numerous inquiries and requests for clarification which we have received concerning contact visitation.

It is the firm belief of the Commission that properly-administered contact visitation providing for a reasonable degree of physical contact and expression of affection between visitors and prisoners offers a measure of comfort, reassurance, and solace to any relationship under stress. Contact visits permit a more natural, open, and accepting atmosphere for maintaining and rebuilding family and community ties.

The difference between a contact and a non-contact visit is not simply a measure of tactile contact, but a measure of human support and love and reaffirmation of self permitted within prison. Very often jail visiting rooms are small, with the noise from contiguous booths heavy, with inmates communicating by shouts, when they would prefer to whisper, with children demanding to be picked up, and not understanding why they cannot be, with wives wanting to be touched, and remaining insular to touch. The sense of depersonalization, already critical in the minds of many of those doing time, may be aggravated under such conditions. The impact of a good visit on both inmate and visitor has been noted by every correction officer, as has the impact of a bad one. A good visit can give aid to positive feelings about oneself and one's future, to enhanced opportunities for release because of a solid parole plan, and a strong, reinforced sense of family belongingness. A bad visit can mean sullessness, depression, and despair.

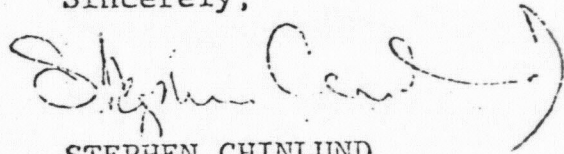
It is reasonable to conclude, and it is the Commission's belief, that contact visits will enhance prisoner-community relations and may lead to a lessening of institutional tension. We are confident

A 87

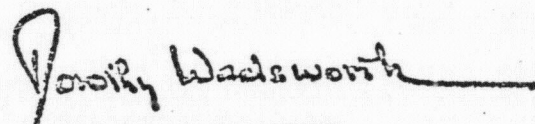
EXHIBIT NO. 2

that the enclosed guidelines will serve to assist all facility administrators in working with the Commission to improve the operation and management of local correctional facilities in New York State.

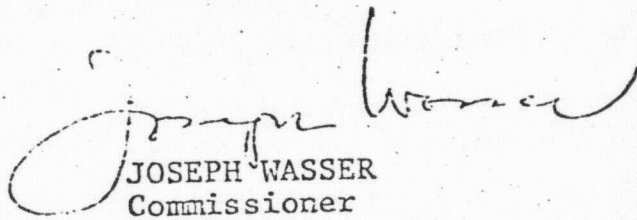
Sincerely,



STEPHEN CHINLUND
Chairman



DOROTHY WADSWORTH
Commissioner



JOSEPH WASSER
Commissioner

SC/DW/JW:mj



STATE OF NEW YORK
STATE COMMISSION OF CORRECTION
ALBANY, N. Y. 12223

August 18, 1976

MEMORANDUM

TO: ALL CORRECTIONAL FACILITY ADMINISTRATORS
FROM: State Commission of Correction
RE: Revised Minimum Standard for Contact Visitation -
9NY CR Section 7008.6

A. Introduction

The State Commission of Correction recognizes its responsibility to provide facility administrators with practice guidelines for the proper application and implementation of the revised minimum standard for visitation (9NYCRR Part 7008) and more specifically the provisions relating to contact visitation (9NYCRR Section 7008.6). The following guidelines are designed to facilitate understanding of and compliance with the contact visitation provisions of Part 7008.

B. Contact Visitation: Definition

9NYCRR Section 7008.6 provides that:

- (a) Physical contact shall be permitted between a prisoner and his visitors.
- (b) Prisoners and their visitors shall be required to conduct themselves in a manner consistent with reasonable standards of public decency.

The primary goal of contact visitation is to provide for prisoner-family visitation in as open, natural and informal an environment as is possible. Consistent with this goal, a reasonable amount of contact shall be permitted between a prisoner and his visitors. Through the removal of boundaries or obstacles to such contact, e.g., plexiglas, screens, wire mesh, physical contact between a prisoner and his visitors will not be impeded. Physical contact shall include handshaking, embracing, handholding,

and kissing. In addition, prisoners are to be permitted to hold or play with their children and generally to visit as freely as possible consistent with legitimate facility concerns for safety, security or order in the visiting room. All physical contact shall be within the bounds of good taste and must not result in unreasonable disruption or interference with other persons in the visiting area.

C. Visiting Area

9NYCRR Section 7008.2 provides that:

- (a) A visiting area of sufficient size to meet the requirements of this Part shall be established and maintained in each facility.
- (b) The visiting area shall be designed so as to allow physical contact between prisoners and their visitors.

In developing a contact visitation program, practical considerations, e.g., existing structural limitations, physical constraints, prisoner population, will influence the design of visiting areas as well as the implementation timetable each facility will employ in establishing a successful visitation program. There are a number of designs which facilities may employ in providing for contact visitation. For example:

- 1. The removal of barriers in existing visiting areas, a design which may include the installation of center tables or countertops.
- 2. Separate table units within an open room where several prisoners and their visitors may meet simultaneously, emphasizing an informal visitation setting.

These examples are merely illustrative and are presented only as an indication of contact visiting area designs which have been successfully employed.

The foregoing is offered merely as an initial practice guide for use in conjunction with Part 7008. The Commission anticipates issuing additional practice commentaries relative to all revised minimum standards. Should you have any interpretative or implementation inquiries regarding any provision of the standards, please contact:

James McSparron, Counsel
NYS Commission of Correction
Empire State Plaza, Tower Bldg.
Albany, New York 12223

(518) 474-7827

A 90

BEST COPY AVAILABLE



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, N. Y. 12223

STEPHEN CHINLUND

CHAIRMAN

MEMBERS

DOROTHY WADSWORTH
JOSEPH WASSER

(518) 474-1416/474-1417

518-474-7827

September 22, 1976

Dear Facility Administrator:

As you know, the six (6) revised minimum standards are scheduled to go into effect on October 1, 1976 and, with the exception of the contact visitation requirement (9NYCRR §§7008.2(b), 7008.6), the Commission expects compliance at that time.

Recent developments call for a different approach to the contact visitation requirement. These developments include the formation of the Governor's Task Force which is looking into the long-range use of local facilities with particular emphasis on the possibility of greater utilization for state inmates. Any move in this direction would require a new formula for any flow of state and federal funds to local facilities.

A second development is the continuing revision of minimum standards by the Commission. While the great majority of these will not entail major structural modification, a few of them will - notably in the area of recreational space both indoor and outdoor. It is expected that any standards with major structural ramifications will be fully studied within the next few months prior to implementation.

The Commission shares with local legislators and officials the desire to undertake comprehensive and long-range correctional planning. As a result, the Commission has determined that compliance with 9NYCRR §§7008.2(b) and 7008.6 will not be required until further study has been undertaken and after the Commission is able to assess with some certainty the possibility of a long-term change in the role and funding sources of local correctional facilities. We have already begun discussion with representatives of the Governor's Task Force, members of the State Legislature and appropriate local officials.

The Commission wishes to reaffirm its commitment to the provision for contact visits for inmates in local correctional facilities. Therefore, facilities which already are in the process of installing contact visits should continue to do so for it will be to their eventual advantage.

EXHIBIT NO. 3

A 91

September 22, 1976

Because many facilities which have been visited by the Commission already have contact visits or are in the process of providing them, each sheriff shall inform us, in writing, of the status of contact visitation in his facility. These status reports should be addressed to:

James McSparron, Counsel
NYS Commission of Correction
Empire State Plaza, Tower Bldg.
Albany, New York 12223

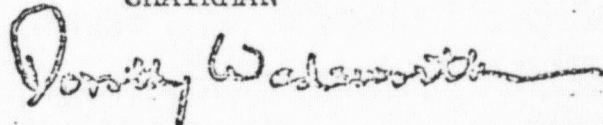
The Commission will continue to work individually with each facility toward making contact visitation possible in the future.

Thank you for your cooperation in this matter.

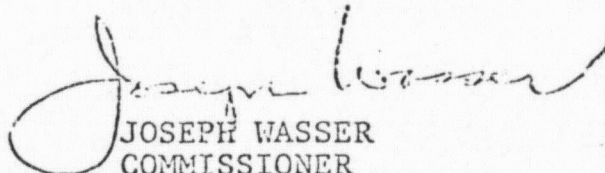
Sincerely,



STEPHEN CHINLUND
CHAIRMAN

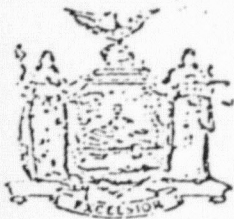


DOROTHY WADSWORTH
COMMISSIONER



JOSEPH WASSER
COMMISSIONER

SC/DW/JW:mj



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
TOWER BUILDING, EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223

CHAIRMAN
STEPHEN CHINLUND
COMMISSIONERS
DOROTHY WADSWORTH
JOSEPH WASSER

November 9, 1976

Dear Facility Administrator:

On June 24, 1976, the Commission promulgated six (6) minimum standards concerning Correspondence (Part 7004); Religion (Part 7024); Packages (Part 7025); Printed Material and Publications (Part 7026); Visitation (Part 7008); Access to Media (Part 7023). These standards had been originally approved by the State Commission of Correction for promulgation on January 1, 1976. Because of a variety of events and after various pressures, they were adopted with an effective date of May 1, 1976, later extended to October 1, 1976.

On September 22nd, again for a variety of reasons, the three Commissioners, with advice of Counsel, signed a letter stating that the compliance with the contact visitation section (9NYCRR §§ 7008.2(b) and 7008.6) of the visitation standard would not be required by the Commission until a future undetermined date. This action was taken because of the concern of the Governor's Task Force for the future role of the county jails, because the Commission wished to develop a package of all forthcoming minimum standards which would involve major capital expense to the counties, (this seemed more reasonable for county budget discussions) and because many sheriffs knowing that contact visitation is clearly in their future, were moving on their own toward contact visitation. Several sheriffs already have full programs, and it was felt that the Commission, through our ongoing and growing relationships with each sheriff and each county, would assist all toward this goal.

In the last two weeks, the legality and validity of the September 22, 1976 letter has been challenged. The combined facts of the Rhem decision, which have been interpreted as mandating contact visitation throughout all correctional facilities in New York State appears to make, in the legal opinion of some, the September 22, 1976 letter an invitation from the Commission to the sheriffs to "break the law."

A 93

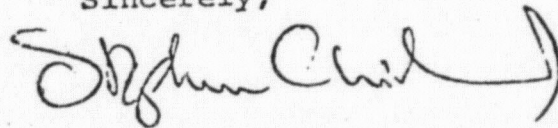
EXHIBIT NO. 4

Therefore, we reaffirm the requirement that there be compliance with the contact visitation provisions of the Visitation minimum standard (9NYCRR Part 7008) effective immediately.

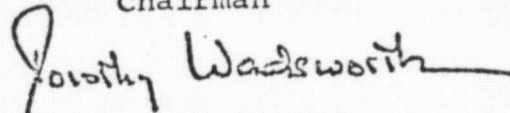
In developing a cautious and evolutionary approach to this seemingly most volatile of issues, the Commission, in good faith, wished to bring, realistically - not in words only -, contact visitation in the county jail facilities. We are committed to the effective implementation of contact visits.

We hope that, despite this determination, we can continue to work with you toward desirable changes.

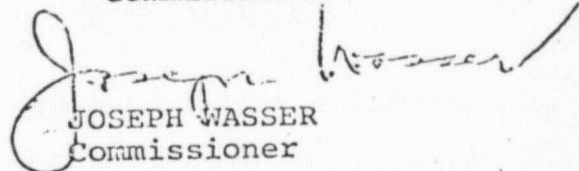
Sincerely,



STEPHEN CHINLUND
Chairman



DOROTHY WADSWORTH
Commissioner



JOSEPH WASSER
Commissioner

SC/DW/JW/mc

At a Special Term of the
Supreme Court of the State of
New York, held in and for the
County of Albany at the Albany
County Courthouse, on the 19th
day of November, 1976.

PRESENT: HON. JOHN J. PENNOCK, Justice

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

JOHN J. McNULTY, JR., Sheriff of Albany
County, et al,

Plaintiffs,

-against-

ORDER TO SHOW CAUSE

STEPHEN CHINLUND, Chairman, and DOROTHY
WADSWORTH and JOSEPH WASSER, Commission-
ers, constituting the New York State
Commission of Corrections,

Defendants..

Upon the summons and complaint herein, and the affidavit
of PETER R. KEHOE, sworn to the 18th day of November, 1976, and
sufficient reason appearing therefore, it is hereby

ORDERED that the defendants or their attorneys show cause
before this Court at a Special Term to be held at the Albany County
Courthouse, located at Albany, New York, on the ^{5/}10th day of *Dec.*
1976, at ⁹ o'clock in the forenoon of that day, or as soon there-
after as counsel can be heard, why a preliminary injunction should not
issue herein enjoining the defendants, their agents, servants and
employees, pending the determination of this matter, from in any
manner, either directly or indirectly:

(1) enforcing Parts 7004, 7008, 7023, 7024, 7025 and

A 95

7026 of Title 9 of the New York Code of Rules and Regulations;

EXHIBIT NO. 5

(2) making said Parts of Title 9 of the New York Code of Rules and Regulations obligatory on plaintiffs;

(3) taking any action whatsoever to compel compliance by the plaintiffs herein with the aforesaid Parts of Title 9 of the New York Code of Rules and Regulations; and

(4) why such other and further orders should not be made herein as to the Court may seem just and proper; and it is further

ORDERED that pending the hearing and determination of the within application, the defendants, their agents, servants and employees be restrained and enjoined from enforcing the aforesaid rules and regulations, from making said parts obligatory on the plaintiffs herein and from taking any action to compel compliance by plaintiffs herein with such rules and regulations; and it is further

with 904CRR Part 100

ORDERED that service of a copy of this Order to Show Cause and the papers upon which the same has been granted upon the defendants on or before the ~~10~~ day of *Nov 19* th, 1976 shall be deemed good and sufficient service hereof.

DATED: *Nov 19/76*

John H. Tamm
JUSTICE OF THE SUPREME COURT

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs

- vs -

CIVIL 76-508

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTHY WADSWORTH, Individually and
in their official capacities as members
of the New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official capacity
as Sheriff of Monroe County and on behalf
of all other persons similarly situated,

Defendants

Daan Braveman and David W. Beier
80 West Main Street
Rochester, N.Y. 14614
Attorneys for plaintiffs

William J. Stevens
307 County Office Building
Rochester, N.Y. 14614
Attorney for defendant Lombard
(John D. Doyle, of counsel)

This is a motion for class certification and for
a preliminary injunction.

FINDINGS OF FACT

1. The defendant Lombard, Sheriff of Monroe County,
is a constitutional officer under the provisions of Article
XIII, Section 13, of the New York State Constitution. The

Sheriff is elected to office for a term of three years. Under the provisions of the County Law, the Sheriff has certain responsibilities in carrying out his constitutional office. The Sheriff does not have the power to levy taxes nor the power to raise revenue for any of the purposes of his office, but rather relies on the financial resources of the county government to carry out the functions of his office. The Monroe County Legislature, on behalf of the Sheriff, appropriates sufficient funds in its annual county budget to pay the costs of the Sheriff's office and any other expenses that the Sheriff may incur. The Sheriff of Monroe County and the other sheriffs of the State of New York, under the provisions of the New York State Correction Law, Section 500c and County Law, Section 217, vest in the sheriff the duty to maintain and control the county jail and custody of the inmates. Funds for this function and responsibility are also provided by the County Legislature in its annual appropriation of funds.

2. Plaintiffs seek to have this court certify the above mentioned action commenced by the plaintiffs as a class action both with respect to the class of plaintiffs purportedly represented and the class that the defendant Sheriff of Monroe County represents. The plaintiffs have sued defendant Lombard as representative of a defendant class of county sheriffs

in New York who are responsible for the care of those persons who are categorized as pretrial detainees in jails which do not provide contact visiting and who have not been involved in an action seeking similar relief.

3. Each defendant sheriff sought to be included within the class has the authority and responsibility of a jail facility under the above mentioned provisions of the State Correction and County Law. Each jail facility differs substantially in terms of its physical configuration, location in the community, staffing patterns and population, amongst many other differences. The funds to maintain and operate such facilities are also individually determined by each legislative body of each county in which such sheriffs are elected. These differences and distinctions between facilities raise many different issues of fact. Clearly the availability of funding to various degrees in the operation of each jail facility varies substantially, based on a wide degree of factors relating to each facility.

4. The plaintiffs have failed to show likelihood of success on the merits of their claims and have failed to show irreparable injury with respect to the subject of contact visiting.

5. Plaintiffs allege there are forty institutions within the state operated by forty different sheriffs. They request the court to conclude that the questions of law and

fact with respect to each of those facilities are common. Each facility is unique in terms of its physical characteristics, its physical location in the community, the degree of security for each institution, the staffing patterns are different, the demands on the facility based on the population of the facilities varies widely and the degree of funding available for each facility to not only operate but to undertake capital improvements is different.

6. The Monroe County Jail operated by the defendant Lombard was constructed in 1960 as a maximum security institution. This facility is located in the central portion of the City of Rochester and located amongst several government offices. The facts surrounding this facility which has an average daily population of 300 to 350 persons, differs substantially from a rural county institution which is not located within any major population area. The Monroe County Jail is the depository for all persons arraigned and who have been apprehended by eleven separate police agencies within Monroe County. The security problems associated with this facility and the cost of operating this facility differ substantially from most problems of a rural jail. The cases cited by plaintiffs relate to security institutions located within the greater New York City area. In each of these cases the court was required to examine the state of facts surrounding each institution and based upon those facts, the

court reached its conclusions. In this particular action, the question of a common issue of law to all members of the plaintiffs class or defendants class cannot be presumed by this court as the plaintiffs request.

7. The defendant Lombard and the institution for which he is responsible differs substantially from other jails and institutions in this state. The defendant Lombard is not representative of the defenses that may be raised by all sheriffs the plaintiffs allege are similarly situated in this state. Each institution has its own individual problems concerning contact visits and each set of problems differs widely with each institution. Each institution and its operation is limited by the amount of funds available. Without the necessary funds, capitol construction may be severely hampered and staffing may be below level. In Monroe County defendant Lombard is confined to the appropriations made for the jail by the Monroe County Legislature. Defendant Lombard is not representative of the defendant class in this action.

8. The defendant Lombard does not represent an interest which would provide an adequate defense of institutions which are substantially different from the Monroe County Jail in terms of their funding priorities from the governing body of each county. A poorer quality institution funded by a low

priority in a county budget certainly would not be representative of the type of facility under defendant Lombard's control.

9. Plaintiffs have failed to show that defendant Lombard falls in the , of those failing to act on grounds generally applicable to the class. There is no showing by the plaintiffs that the defendant Lombard is required to act in any particular manner. The facts surrounding the Monroe County Jail are such that there is doubt whether the result reached in the Rhem cases (Rhem v. Malcolm, 507 F.2d. 333 (2 cir), Rhem v. Malcolm, 527 F.2d. 1041 (2 cir.)) cited by the plaintiffs applies to the Monroe County Jail. There are factual differences between the New York City institutions and the Monroe County jail. The plaintiffs make no showing concerning the other forty institutions that are supposedly similar to defendant Lombard's facility. The facts affecting the individual members vary so widely and are so divergent that it would not be fair to conclude that there are any facts common to the members of the class, prior to trial.

10. The plaintiffs are actually asking this court to grant not a prohibitory injunction, but a mandatory writ which would compel the defendants, in order to obey it, to take affirmative action at considerable expense, estimated to be \$750,000.00. A preliminary injunction such as plaintiffs request will not maintain the status quo pending final determination of the suit at a full hearing. It will permit

the plaintiffs a clear and undue advantage in that such temporary relief gives plaintiffs essentially all the actual advantages that could be obtained from a final adjudication. This would be unfair to defendant Lombard and to the other sheriffs of the class and would essentially foreclose any further examination of plaintiffs' demands before this court.

11. The plaintiffs have only named as defendants Lombard and the three commissioners of correction. Plaintiffs have not named as defendants any members of the governing body of the county. This is fatal to the plaintiffs likelihood of success in that the governing body of the county is a necessary and indispensable party. The court had jurisdiction of an administrative officer of the City of New York and the Mayor of such City in *Detainees of Brooklyn House of Detention vs. Malcolm*, 520 F.2d. 399. Any order by this court to a sheriff would be a futile gesture if the governing body should refuse to appropriate funds that might be required. This would clearly cause a significant confrontation between a constitutional officer of the county and the legislative body of the county. The result could very well be a demand upon this court, if plaintiffs were granted a preliminary injunction, to release detainee prisoners. This clearly would be a violent result and so substantial a disruption of the status quo, that any further hearing on the merits would be a futile act.

CONCLUSION OF LAW

1. Plaintiffs' demand for certification as a class action with respect to the class that the defendant sheriff of Monroe County represents is denied. Plaintiffs' demand for a preliminary injunction is in all respects denied.

ALL OF THE ABOVE IS SO ORDERED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

June 21, 1977.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA, et al.,

Plaintiffs,

-vs-

STEPHEN CHINLUND, et al.,

Defendants.

NOTICE OF MOTION

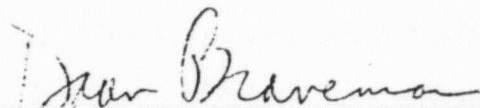
Civ. 76-508

PLEASE TAKE NOTICE that upon the annexed affidavits of David W. Beier III, and Adam F. McQuillan, the Court's decision and order, dated June 21, 1977 and all other papers and proceedings herein, plaintiffs will move this Court at 10:00 o'clock in the forenoon on the 11th day of July, 1977, or as soon thereafter as counsel can be heard before the Hon. Harold P. Burke in the United States Court House, 100 State Street, Rochester, New York, for an order pursuant to Rule 59(e) of the Federal Rules of Civil Procedure amending the Order, dated June 21, 1977 in the following respects:

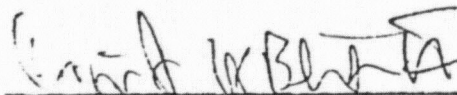
- (a) vacate the denial of preliminary relief and certification of a defendant class on the ground that the Court made findings of fact on the basis of unverified statements in a brief and without first conducting an evidentiary hearing; and
- (b) amend the Order by including an adjudication of plaintiffs' motion for certification of a plaintiff class.

PLEASE TAKE FURTHER NOTICE that plaintiffs will move
for such other relief as the court deems just and equitable.

Dated: Rochester, New York
July 1, 1977



DAAN BRAVEMAN, ESQ.
GREATER UP-STATE LAW PROJECT
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500



DAVID W. BEIER III, ESQ.
MONROE COUNTY LEGAL
ASSISTANCE CORPORATION
80 West Main Street
Rochester, New York 14614
Tel: 716-325-2520

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER
and DOROTHY WADSWORTH, Individ-
ually and in their official
capacities as members of the New
York State Commission of Correction,
and WILLIAM LOMBARD, Individually
and in his official capacity as
Sheriff of Monroe County and on
behalf of all other persons simi-
larly situated,

Defendants.

Civil 76-508

AFFIDAVIT IN SUPPORT OF
A RULE 59(e) MOTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

ADAM F. McQUILLAN, being duly sworn, deposes and says:

1. That he is currently the President of the Correc-
tional Association of New York and makes this affidavit in support
of plaintiff's motion pursuant to Federal Rule 59(e).

2. That he has read this Court's opinion and order of
June 21, 1977.

3. That he has an extensive background in corrections
(see a copy of his resume attached as Exhibit #1). That he served
for twenty-six years in the New York City Jail system. That he
was the warden of a jail which operated a program of contact vis-
itation. That contact visitation in any setting does not create a

security risk. Rather, the presence of contact visitation generally reduces tensions within the institution and limits security problems.

4. That he has visited, as a consultant, several New York State Jails outside of New York City. Specifically, he has visited Rockland, Dutchess, Suffolk, Nassau and Westchester County jails.

5. That despite differences in the physical structure, location, and capacity of various county jails the impact of a policy denying contact visitation is uniform. Inmates who are prohibited from having any opportunity to touch their visitors become frustrated and increasingly isolated from the community. The detrimental impact of non-contact visitation is well documented and is the same for inmates housed in jails in rural and metropolitan areas.

6. That the implementation of contact visitation would pose no greater security threat in a rural or smaller metropolitan area than it did in New York City. That in fact the Commissioner of Correction for New York City initially took the position that contact visitation in the metropolitan area of New York City was more dangerous than the contact visits which were permitted in rural upstate New York prisons. However, the present position of the New York City jail system is to provide contact visitation, and experience has shown that there are no significant security problems with the current programs. Additionally, there is no

valid distinction between urban and smaller metropolitan or rural area jails relative to the question of whether the implementation of contact visitation would be more or less likely to secure an inmate's appearance at trial.

WHEREFORE, your deponent respectfully requests that the court vacate its order, dated June 21, 1977, and grant plaintiffs' motion for a preliminary injunction and class certification.

Adam F. McQuillan
ADAM F. McQUILLAN

Sworn to before me this 29th
day of June, 1977.

Rockelle A. Friedlander

ROCHELLE A. FRIEDLANDER
NOTARY PUBLIC, State of New York
No. 4311927
Qualified in New York County
Term Expires March 31, 1979

BEST COPY AVAILABLE

A 109

RESUME
OF
ADAM F. McQUILLAN

Address 21 Candle Lane
Levittown, N.Y. 11756

Business Address The Correctional Association of New York
135 East 15th Street
New York, N.Y. 10003

Personal Birth Date: December 11, 1922 Birth Place: Dumbarton, Scotland
Social Security Number: 067 16 3285
Education: B.A. Sociology, Empire State College

Employment 1946-1949 - Independent Business roofing contractor,
McQuillan Roofing & General Contracting, Inc.
1949-January 1, 1976 - New York City Department of Corrections
Held all civil service ranks by promotion
1949 - Appointed Corrections Officer, New York City
Department of Corrections
1955 - Promoted by civil service test to rank of Captain
1958-1962 - Director Industries
1960 - Promoted to rank of Assistant Deputy Warden
1971 - Promoted to rank of Deputy Warden
1972 - Deputy Warden in command, Branch Queens House of
Detention, Psychiatric Center
1973 - Promoted to rank of Warden
1975 - Queens House of Detention Warden
1976 - present - President, Correctional Association of N.Y.

Activities and Interests Past President Assistant Deputy Wardens Benevolent Association
Past President Emerald Society, New York City Department of Corrections
Past President Emerald Society, U.S.A.
Helped to set up Adult Learning Center in conjunction with LaGuardia
College for prisoners education
Lecturer Correctional Academy, four years (Correctional Administration)
Guest Lecturer, City College of New York, Columbia Law School,
Empire State College, Pace College, citizens groups
Attended 24 sessions over 2 year period, Boston College School of
Human Relations Correctional Administration
Bowling - won 5 major Kegler Tournaments, golf, swimming
Youth Activities (Y.O.M.) Levittown
Bishops Committee, Rockville Center Minorities Work Opportunities

A 110

EXHIBIT 1

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

-VS-

AFFIDAVIT IN SUPPORT
OF A MOTION TO AMEND
OR ALTER A JUDGMENT
PURSUANT TO RULE
59(e)

Defendants

1. That your deponent is admitted to practice law in the Western District of New York. That he is currently employed by Monroe County Legal Assistance Corporation who represents the plaintiff class and is fully familiar with all the papers and proceedings in this matter.

3. That this Court's order of June 21, 1977 decided plaintiffs' motion for a preliminary injunction and for certification of a defendants' class.

4. That despite a letter dated February 7, 1977 from plaintiffs' attorneys urging that this Court hold a hearing on the preliminary injunction motion, if there were facts in dispute (See Appendix A), this Court made findings of fact with respect to both of plaintiffs' motions based on affidavits and statements contained in defendants' memoranda of law.

5. That this Court made the following findings of fact, without reliance upon verified affidavit, but rather based on mere assertions in defendants' memoranda of law:

(a) Finding of fact numbered 3 and 5 refer to the physical differences between various jails within the defendant class. This finding is only supported by a passage at page 2, paragraph 2 of defendants' brief.

(b) Finding of fact numbered 6 indicates that the Monroe County Jail was built in 1960 houses 300-350 inmates, that it differs from rural jails, and is serviced by eleven policy agencies. These facts can only be found in defendants' brief at pages 5 and 6.

(c) Finding of fact numbered 8 attempts to compare the institution run by defendant Lombard and one run in a poorer fashion. This factual assertion has no support in verified pleadings, but rather is extracted from page 7 of defendants' brief.

(d) Finding of fact numbered 9 indicates that there are factual differences between the Monroe County Jail and the jails of New York City. This assertion is made only in defendants' brief, at page 8, and is devoid of specifics.

6. That this Court misapprehended plaintiffs' preliminary injunction request. In Findings of Fact numbered 10 the Court finds that the preliminary relief sought would involve an expenditure of \$750,000. However, plaintiffs did not request immediate implementation of contact visitation, rather they moved for an order which only required the submission of plans relative to contact visitation. Such relief would require only minimal expenditures by defendants.

7. That despite the pendency of a motion for certification of a plaintiff class this Court has not yet ruled on that motion.

WHEREFORE, your deponent prays that this Court vacate its order of June 21, 1977 to permit a hearing to be held on all three of the aforementioned motions.


DAVID W. BEIER III

Sworn to before me this
1ST day of July , 1977.

Sharon Durant

SHARON DURANT
Notary Public, State of New York
No. 4517301
Commission Expires March 10, 1978

A 113

February 7, 1977

Hon. Harold P. Burke
United States District Court
100 State Street
Rochester, New York 14614

RE: Marcera v. Chinlund
Civ. 76-508

Dear Judge Burke:

In McNulty v. Chinlund, the New York Supreme Court, Albany County, held that the Commission of Correction is prohibited by New York State law from promulgating or enforcing regulations relating to contact visits at local jails. The court's dictum regarding the federal constitutional rights of pretrial detainees (who were not parties in that case) is plainly not binding upon this Court.

Rather, this Court is bound by the decisions of the Second Circuit which have held that presumptively innocent pretrial detainees have a constitutional right to a contact visitation program. (See Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Relief at 3-6). Moreover, these decisions have explicitly rejected defendant's notion that purported factual differences justify continued denial of contact visitation programs. As Judge Lasker stated in Ambrose v. Malcolm, "while physical and security considerations must be taken into account in determining the scope and implementation of a contact visiting program, they may not act as a bar to that right." (See Plaintiffs' Reply Memorandum of Law at 3-4). Finally, if this Court should nevertheless decide that a factual hearing is necessary, it should not deny plaintiffs' motion - as urged by defendants - but rather should immediately conduct such a hearing.

Plaintiffs respectfully request that the Court promptly decide the pending matters.

Very truly yours,

Daan Braveman

DB:sd
cc: John Doyle, Esq.

Appendix A

A 114

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs

- vs -

CIVIL 76-508

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTEY WADSWORTH, Individually and
in their official capacities as members
of the New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official capacity
as Sheriff of Monroe County and on behalf
of all other persons similarly situated,

Defendants

Daan Braveman and David W. Beier
80 West Main Street
Rochester, N.Y. 14614
Attorneys for plaintiffs

William J. Stevens
307 County Office Building
Rochester, N.Y. 14614
Attorney for defendant Lombard
(John D. Doyle, of counsel)

This is a motion for class certification and for
a preliminary injunction.

FINDINGS OF FACT

1. The defendant Lombard, Sheriff of Monroe County,
is a constitutional officer under the provisions of Article
XIII, Section 13, of the New York State Constitution. The

Sheriff is elected to office for a term of three years. Under the provisions of the County Law, the Sheriff has certain responsibilities in carrying out his constitutional office. The Sheriff does not have the power to levy taxes nor the power to raise revenue for any of the purposes of his office, but rather relies on the financial resources of the county government to carry out the functions of his office. The Monroe County Legislature, on behalf of the Sheriff, appropriates sufficient funds in its annual county budget to pay the costs of the Sheriff's office and any other expenses that the Sheriff may incur. The Sheriff of Monroe County and the other sheriffs of the State of New York, under the provisions of the New York State Correction Law, Section 500c and County Law, Section 217, vest in the sheriff the duty to maintain and control the county jail and custody of the inmates. Funds for this function and responsibility are also provided by the County Legislature in its annual appropriation of funds.

2. Plaintiffs seek to have this court certify the above mentioned action commenced by the plaintiffs as a class action both with respect to the class of plaintiffs purportedly represented and the class that the defendant Sheriff of Monroe County represents. The plaintiffs have sued defendant Lombard as representative of a defendant class of county sheriffs

in New York who are responsible for the care of those persons who are categorized as pretrial detainees in jails which do not provide contact visiting and who have not been involved in an action seeking similar relief.

3. Each defendant sheriff sought to be included within the class has the authority and responsibility of a jail facility under the above mentioned provisions of the State Correction and County Law. Each jail facility differs substantially in terms of its physical configuration, location in the community, staffing patterns and population, amongst many other differences. The funds to maintain and operate such facilities are also individually determined by each legislative body of each county in which such sheriffs are elected. These differences and distinctions between facilities raise many different issues of fact. Clearly the availability of funding to various degrees in the operation of each jail facility varies substantially, based on a wide degree of factors relating to each facility.

4. The plaintiffs have failed to show likelihood of success on the merits of their claims and have failed to show irreparable injury with respect to the subject of contact visiting.

5. Plaintiffs allege there are forty institutions within the state operated by forty different sheriffs. They request the court to conclude that the questions of law and

fact with respect to each of those facilities are common. Each facility is unique in terms of its physical characteristics, its physical location in the community, the degree of security for each institution, the staffing patterns are different, the demands on the facility based on the population of the facilities varies widely and the degree of funding available for each facility to not only operate but to undertake capital improvements is different.

6. The Monroe County Jail operated by the defendant Lombard was constructed in 1960 as a maximum security institution. This facility is located in the central portion of the City of Rochester and located amongst several government offices. The facts surrounding this facility which has an average daily population of 300 to 350 persons, differs substantially from a rural county institution which is not located within any major population area. The Monroe County Jail is the depository for all persons arraigned and who have been apprehended by eleven separate police agencies within Monroe County. The security problems associated with this facility and the cost of operating this facility differ substantially from most problems of a rural jail. The cases cited by plaintiffs relate to security institutions located within the greater New York City area. In each of these cases the court was required to examine the state of facts surrounding each institution and based upon those facts, the

court reached its conclusions. In this particular action, the question of a common issue of law to all members of the plaintiffs class or defendants class cannot be presumed by this court as the plaintiffs request.

7. The defendant Lombard and the institution for which he is responsible differs substantially from other jails and institutions in this state. The defendant Lombard is not representative of the defenses that may be raised by all sheriffs the plaintiffs allege are similarly situated in this state. Each institution has its own individual problems concerning contact visits and each set of problems differs widely with each institution. Each institution and its operation is limited by the amount of funds available. Without the necessary funds, capitol construction may be severely hampered and staffing may be below level. In Monroe County defendant Lombard is confined to the appropriations made for the jail by the Monroe County Legislature. Defendant Lombard is not representative of the defendant class in this action.

8. The defendant Lombard does not represent an interest which would provide an adequate defense of institutions which are substantially different from the Monroe County Jail in terms of their funding priorities from the governing body of each county. A poorer quality institution funded by a low

priority in a county budget certainly would not be representative of the type of facility under defendant Lombard's control.

9. Plaintiffs have failed to show that defendant Lombard falls in the category of those failing to act on grounds generally applicable to the class. There is no showing by the plaintiffs that the defendant Lombard is required to act in any particular manner. The facts surrounding the Monroe County Jail are such that there is doubt whether the result reached in the Rhem cases (Rhem v. Malcolm, 507 F.2d. 333 (2 cir), Rhem v. Malcolm, 527 F.2d. 1041 (2 cir.)) cited by the plaintiffs applies to the Monroe County Jail. There are factual differences between the New York City institutions and the Monroe County jail. The plaintiffs make no showing concerning the other forty institutions that are supposedly similar to defendant Lombard's facility. The facts affecting the individual members vary so widely and are so divergent that it would not be fair to conclude that there are any facts common to the members of the class, prior to trial.

10. The plaintiffs are actually asking this court to grant not a prohibitory injunction, but a mandatory writ which would compel the defendants, in order to obey it, to take affirmative action at considerable expense, estimated to be \$750,000.00. A preliminary injunction such as plaintiffs request will not maintain the status quo pending final determination of the suit at a full hearing. It will permit

the plaintiffs a clear and undue advantage in that such temporary relief gives plaintiffs essentially all the actual advantages that could be obtained from a final adjudication. This would be unfair to defendant Lombard and to the other sheriffs of the class and would essentially foreclose any further examination of plaintiffs' demands before this court.

11. The plaintiffs have only named as defendants Lombard and the three commissioners of correction. Plaintiffs have not named as defendants any members of the governing body of the county. This is fatal to the plaintiffs likelihood of success in that the governing body of the county is a necessary and indispensable party. The court had jurisdiction of an administrative officer of the City of New York and the Mayor of such City in *Detainees of Brooklyn House of Detention vs. Malcolm*, 520 F.2d. 399. Any order by this court to a sheriff would be a futile gesture if the governing body should refuse to appropriate funds that might be required. This would clearly cause a significant confrontation between a constitutional officer of the county and the legislative body of the county. The result could very well be a demand upon this court, if plaintiffs were granted a preliminary injunction, to release detainee prisoners. This clearly would be a violent result and so substantial a disruption of the status quo, that any further hearing on the merits would be a futile act.

CONCLUSION OF LAW

1. Plaintiffs' demand for certification as a class action with respect to the class that the defendant sheriff of Monroe County represents is denied. Plaintiffs' demand for a preliminary injunction is in all respects denied.

ALL OF THE ABOVE IS SO ORDERED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

June 21, 1977.

A 122

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

AFFIDAVIT IN OPPOSITION
TO MOTION

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTHY WADSWORTH, Individually and
in their official capacities as mem-
bers of the New York State Commis-
sion of Currection, and WILLIAM
LOMBARD, Individually and in his
official capacity as Sheriff of
Monroe County and on behalf of all
other persons similarly situated,

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE) SS.
CITY OF ROCHESTER)

JOHN D. DOYLE, being duly sworn, deposes and says:

1. That he is the First Deputy County Attorney of the
County of Monroe and represents the defendant William Lombard,
Sheriff of Monroe County, one of the named defendants in the above
captioned action.

2. That he is fully familiar with the facts and circum-
stances of this matter and makes this affidavit in opposition to
a motion of the plaintiffs pursuant to Federal Rule 59(e).

3. That your deponent has provided copies of the plain-
tiffs motion papers to the Counsel to the Sheriff, David Van Varick,
and to the Undersheriff of Monroe County, John B. Kinnicutt, in
the absence of the defendant Lombard, who is vacationing outside

(

the United States at the time such motion was served upon your deponent.

4. That the plaintiffs have moved to vacate this court's denial of the preliminary injunction and class certification requested by plaintiffs in their motion to this court on December 13, 1976.

5. That in support of such motion the plaintiffs have submitted an affidavit from Adam F. McQuillan, whom plaintiffs purport has some expertise with respect to contact visitation and who alleges in the fourth paragraph of his affidavit that he has visited as a consultant several New York State jails outside New York City and specifically has visited the county jails in Rockland, Dutchess, Suffolk, Nassau and Westchester Counties. The affidavit continues to represent that the "impact of a policy denying contact visitation is uniform." and further states "that the implementation of contact visits would pose no greater security threat in a rural or smaller metropolitan area than it did in New York City."

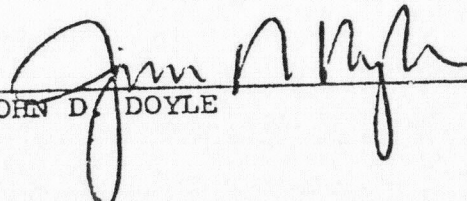
6. That the plaintiffs are requesting this court again to indulge in granting injunctive relief to the plaintiffs based upon an affidavit of a person who by his own admission has never visited the facility that is the specific subject of this action, i.e., the Monroe County Jail.

7. That your deponent further questions the ability of the plaintiffs to submit such an affidavit that does not relate to the specific grounds upon which plaintiffs object to this court's findings of fact. This affidavit simply purports to address the

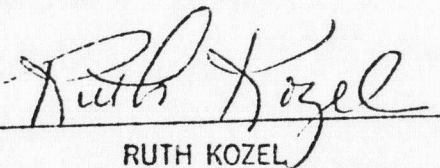
10. That the plaintiffs have again asserted their position that they seek only injunctive relief with respect to the submission of plans for contact visits but as this court correctly states in findings of fact No. 10 such an order would in fact upset the status quo pending final determination of this suit. Submission of plans is tantamount to granting final relief with respect to the plaintiffs demands.

11. That in the opinion of your defendant the motion brought by the plaintiffs is defective under Rule 59(e) in that such motion is intended only to correct a judgment ordered by this court whereas the plaintiff are in effect seeking to utilize such rule in an effort to have this court reconsider the motion made before this court on December 13, 1976 de novo.

WHEREFORE, your deponent respectfully requests that this court deny the motion to amend the order in this action.


JOHN D. DOYLE

Sworn to before me this
8th day of July, 1977


RUTH KOZEL

Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

-vs-

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTHY WADSWORTH, Individually and in
their official capacities as members of the
New York State Commission of Correction, and
WILLIAM M. LOMBARD, Individually and in his
official capacity as Sheriff of Monroe County
and on behalf of all other persons similarly
situated,

Defendants.

STATE OF NEW YORK
COUNTY OF MONROE SS:

JOHN B. KINNICUTT, being duly sworn, deposes and says:

1. That he is the duly appointed Undersheriff for the County of Monroe and has held that position since January 1, 1974.
2. That as the Undersheriff of Monroe County he is familiar with the Monroe County Jail, its history and operation.
3. That as an individual involved in the operation of a local correctional facility and involved in the criminal justice system, he is aware to the same extent that any other individual so involved would be, that the Monroe County Jail differs in physical characteristics such as size and location as well as in other aspects such as staffing, from other county jails located throughout New York State and that, in fact, each of those jails differs in many respects from each other.

4. That the Monroe County Jail was built in the late 1960s and early 1970s and was fully open for operation in April 1971.

5. That the Monroe County Jail serves at least 11 local police agencies and houses an average inmate population that has ranged between 300 to 350 inmates per day over the past several years.

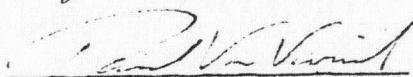
WHEREFORE, Your Deponent respectfully requests that the motion to amend the Order in this action be denied by the Court.


JOHN B. KINNICUTT
UNDERSHERIFF

Sworn to before me

this 8 day of

July, 1977.



PAUL W. VARICK
Notary Public, No. 4802702
Monroe County
Expires on March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs,

AFFIDAVIT

vs.

CIVIL NO. 76-508

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTHY WADSWORTH, Individually and
in their official capacities as mem-
bers of the New York State Commis-
sion of Correction, and WILLIAM
LOMBARD, Individually and in his
official capacity as Sheriff of
Monroe County and on behalf of all
other persons similarly situated,

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE) SS.
CITY OF ROCHESTER)

PAUL O. HARRISON, being duly sworn, deposes and says:

1. That he is an Assistant Attorney General on the
staff of Hon. Louis J. Lefkowitz, Attorney General of the State
of New York and is of counsel to Defendants Chinlund, Wasser
and Wadsworth in this action; and that he makes this affidavit
in response to the Plaintiffs' motion returnable before this
Court July 11, 1977.

2. That Defendants, Chinlund, Wasser and Wadsworth,
comprising the New York State Commission of Correction,
respectfully abstain from attacking or supporting the Decision
and Order of the Court, granted in this action on June 21, 1977

denying the Plaintiffs' demand for a Preliminary Injunction
and denying class certification.

Paul O. Harrison

PAUL O. HARRISON

Sworn to before me this
11th day of July, 1977.

Linda J. Sharpe

LINDA J. SHARPE
Notary Public, State of New York
Qualified in Monroe County 79
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of
all others similarly situated,

Plaintiffs

-VS-

STEPHEN CHINLUND, JOSEPH WASSER
and DOROTHY WADSWORTH, Individually:
and in their official capacities as:
members of the New York State
Commission of Correction, and
WILLIAM LOMBARD, Individually and
in his official capacity as
Sheriff of Monroe County and on
behalf of all other persons
similarly situated,

Defendants

NOTICE OF APPEAL

Civ. 76-508

NOTICE IS HEREBY GIVEN that the above-named
plaintiffs hereby appeal to the United States Court of Appeals
for the Second Circuit from the order, decision and judgment
denying plaintiffs' motion for a preliminary injunction and
certification of a defendant's class, which was entered in
this action on the 22nd day of June, 1977.

Dated: July 20, 1977

MONROE COUNTY ASSISTANCE CORPORATION
DAVID W. BE OF COUNSEL
Attorney for plaintiffs
Office and P.O. Address
80 West Main Street
Rochester, New York 14614
Tel. No. 716-325-2520

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH MARCERA and JOHN DILLMAN,
Individually and on behalf of all
others similarly situated,

Plaintiffs

- vs -

CIVIL 76-508

STEPHEN CHINLUND, JOSEPH WASSER and
DOROTHY WADSWORTH, Individually and
in their official capacities as members
of the New York State Commission of
Correction, and WILLIAM LOMBARD,
Individually and in his official capacity
as Sheriff of Monroe County and on behalf
of all other persons similarly situated,

Defendants

Daan Braveman and David W. Beier
80 West Main Street
Rochester, N.Y. 14614
Attorneys for plaintiffs

William J. Stevens
307 County Office Building
Rochester, N.Y. 14614
Attorney for defendant Lombard
(John D. Doyle, of counsel)

By notice of motion with supporting papers filed
July 5, 1977 the plaintiffs move for an order amending the
order of this court dated June 21, 1977 to vacate the denial
of preliminary relief and certification of a defendant class
on the ground that the court made findings of fact on the

- 2 -

basis of unverified statements in a brief and without first conducting an evidentiary hearing and to amend the order by including an adjudication of plaintiffs' motion for certification of a plaintiff class. On due consideration it is hereby

ORDERED that the motion is in all respects denied.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

July 29, 1977.

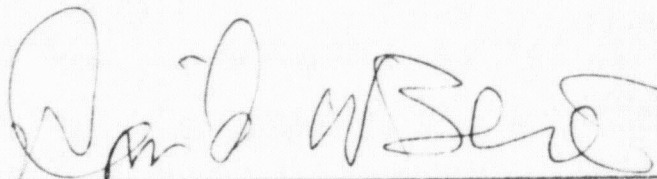
A 133

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

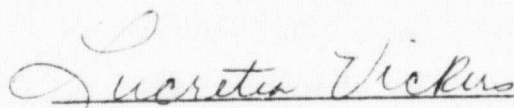
DAVID W. BEIER, III, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age
and resides at Rochester, New York.

On September 14, 1977 at County Office Building, 39
West Main Street, Rochester, New York 14614 deponent served the
within Appellant's Brief and Appendix upon an agent for John
Doyle, Esq. one of the attorneys herein, by delivering a true
copy thereof to his agent personally.



DAVID W. BEIER III

Sworn to before me this
14th day of September, 1977.


Reg #9463550

LUCRETIA VICKERS
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1978